

The Stamp Act (1879)

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THE STAMP ACT, 1879.

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ACT No. I OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 17th January 1879).

An Act to consolidate and amend the law relating to Stamps.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Indian Stamp Act, 1879:" Short title.

It extends to the whole of British India ;

Local extent.

And it shall come into force on the first day of April, 1879.

Commencement.

2. On and after that day, the Acts specified in the third schedule shall be repealed to the extent specified in the third column of the same schedule. But all rules made under the General Stamp Act, 1869, and then in force shall, so far as they are consistent with this Act, be deemed to have been made hereunder. And all references made to the General Stamp Act, 1869, in enactments passed subsequently thereto, shall be deemed to be made to this Act.

Repeal of enactments.

3. In this Act, unless there is something repugnant in the subject or context,—

Interpretation-clause.

(1.) "Banker" includes a bank and any person acting as a banker : "Banker."

(2.) "Bill of exchange" includes a hundī :

"Bill of exchange."

(3.) "Bill of lading" means any instrument signed by the owner of a vessel or his agent, acknowledging the receipt of goods therein described, and undertaking

"Bill of lading."

to

to deliver the same at a place and to a person therein mentioned or indicated :

"Bond."

(4.) "Bond" means—

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be ;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another ; and

(c) any instrument so attested whereby a person obliges himself to deliver grain or other agricultural produce to another :

"Chargeable."

(5.) "Chargeable" means, as applied to an instrument executed or first executed after this Act comes into force, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in British India when such instrument was executed or, where several persons executed the instrument at different times, first executed :

"Cheque."

(6.) "Cheque" means a bill of exchange drawn on a banker and payable on demand :

"Chief Controlling Revenue-Authority "

(7.) "Chief Controlling Revenue-Authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces, the Board of Revenue : in the Presidency of Bombay, outside Sind and the limits of the town of Bombay, a Revenue Commissioner : in Sind, the Commissioner : in the Panjáb, the Financial Commissioner ; and elsewhere, the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office :

"Collector."

(8.) "Collector" means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a District, and includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official

official Gazette, appoint in this behalf by name or in virtue of his office :

(9.) "Conveyance" means any instrument by which property (whether moveable or immoveable) is transferred on sale : "Conveyance."

(10.) "Duly stamped," as applied to an instrument, means stamped, or written upon paper bearing an impressed stamp, in accordance with the law in force in British India when such instrument was executed or first executed : "Duly stamped."

(11.) "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-Authority : "Instrument of partition."

(12.) "Lease" means a lease of immoveable property and includes also "Lease"

(a) a pattá,

(b) a kabúliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for, immoveable property,

(c) any instrument by which tolls of any description are let, and

(d) any writing on an application for a lease intended to signify that the application is granted :

(13.) "Mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of another, a right over specified property : "Mortgage-deed."

(14.) "Paper" includes vellum, parchment or any other material on which an instrument may be written : "Paper."

(15.) "Policy of insurance" means any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event : "Policy of insurance."

It includes a life-policy :

(16.) "Power-of-attorney"

"Power-of-attorney."

(16.) "Power-of-attorney" means any instrument (not chargeable with a fee under the law relating to Court-fees for the time being in force) empowering a specified person to act in the stead of the person executing it :

"Receipt."

(17.) "Receipt" means any note, memorandum, writing or advertisement whereby any money or any bill of exchange, cheque or promissory note is acknowledged to have been received, or whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or which signifies or imports any such acknowledgment, whether the same is or is not signed with the name of any person :

"Schedule."

(18.) "Schedule" means a schedule to this Act annexed :

"Settlement."

(19.) "Settlement" means any non-testamentary disposition in writing, of moveable or immoveable property, made—

(a) in consideration of marriage,

(b) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or

(c) for any religious or charitable purpose :

It includes an agreement in writing to make such a disposition :

"Vessel."

(20.) "Vessel" means anything made for the conveyance by water of human beings or property :

"Written,"
"writing."

(21.) "Written" and "writing" include every mode in which words or figures can be expressed upon paper.

Schedules to
be read as
part of Act.

4. The schedules and everything therein contained shall be read and construed as part of this Act.

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to Duty.

Instruments

5. Subject to the exemptions contained in the
second

second schedule, the following instruments shall be chargeable with duty of the amount indicated in the first schedule as the proper duty therefor respectively, that is to say—

chargeable
with duty

(a) every instrument mentioned in the first schedule, and which, not having been previously executed by any person, is executed in British India on or after the first day of April, 1879;

(b) every bill of exchange, cheque or promissory note drawn or made out of British India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in British India; and

(c) every instrument (other than a bill of exchange, cheque or promissory note) mentioned in the first schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India, and is received in British India.

6. Where, in the case of any sale, lease, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed for the conveyance, lease, mortgage or settlement in the first schedule, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

Several in-
struments
used in single
transactions.

The parties may determine for themselves which of the instruments so employed shall, for the purposes of this section, be deemed to be the principal instrument.

7. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

Instruments
relating to
several dis-
tinct matters

Subject to the provisions of the first clause of this section, an instrument so framed as to come within two or more of the descriptions in the first schedule shall, where the duties chargeable thereunder are dif-

Instruments
coming with
in several
descriptions
in schedule

ferent,

ferent, be chargeable only with the highest of such duties ; but nothing herein contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

Power to
reduce or
remit duty.

8. The Governor General in Council may, by order published in the *Gazette of India*,

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

(b) cancel or vary such order to the extent of the powers hereby given.

B.—Of Stamps and the Mode of using them.

Duties how
to be paid.

9. Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

(a) according to the provisions herein contained, or

(b) when no such provision is applicable thereto—
as the Governor General in Council may by rule direct.

The rules made under this section may, among other matters, regulate—

(1) in the case of each kind of instrument—the description of stamps which may be used,

(2) in the case of instruments stamped with impressed stamps—the number of stamps which may be used,

(3) in the case of hundis—the size of the paper on which they are written.

Use of
adhesive
stamps.

10. The following instruments may be stamped with adhesive stamps, namely :—

(a) instruments chargeable with the duty of one
anna,

anna, except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(b) bills of exchange, cheques and promissory notes drawn or made out of British India;

(c) entry as an advocate, vakil or attorney on the roll of a High Court;

(d) notarial acts; and

(e) transfers by endorsement of shares of public Companies and Associations.

11. Whoever affixes any adhesive stamp to any instrument chargeable with duty and which has been executed by any person, shall, when affixing such stamp, cancel the same so that it cannot be used again, Cancellation of adhesive stamps.

and whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

12. Every instrument written upon paper stamped with an impressed stamp, shall be written in such manner, that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument. How instruments stamped with impressed stamps are to be written.

13. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written: provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby. Only one instrument to be on same stamp.

14. Every instrument written in contravention Instrument written contrary to sec

Section 12 or 13
deemed un-
stamped.
Denoting
duty.

of section twelve or thirteen, shall be deemed to be unstamped.

15. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application be made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument in such manner as the Governor General in Council may by rule prescribe.

C.—Of the Time of stamping Instruments.

Instruments
executed in
British India

16. All instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution.

Instruments
other than
bills, cheques
and notes
executed out
of British
India.

17. Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, cheque or promissory note, may be stamped within three months after it has been first received in British India; or, where such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, and he shall stamp the same, in such manner as the Governor General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

Bills, cheques
and notes
drawn out of
British
India.

18. The first holder in British India of any bill of exchange, cheque or promissory note drawn or made out of British India shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in British India, affix thereto the proper stamp and cancel the same:

Provided that if, at the time any such bill, cheque or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section eleven, and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by

by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled. But nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

D.—Of Valuations for Duty.

19. Where an instrument is chargeable with *ad valorem* duty in respect of an amount expressed in pounds sterling, pounds currency, francs or dollars, such duty shall be calculated on the value of such money in the currency of British India according to the following scale :—

Conversion of amount expressed in certain currencies.

One pound sterling or pound currency is equivalent to ten rupees :

One hundred francs are equivalent to forty rupees :

One Mexican or China dollar is equivalent to two rupees four annas.

20. Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any other foreign or colonial currency, such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

Conversion of amount expressed in other foreign currencies.

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable security, such duty shall be calculated on the value of such stock or security according to the average price thereof on the day of the date of the instrument.

Stock and marketable securities how to be valued.

22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Effect of statement of rate of exchange or average price.

23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not

Instruments reserving interest.

be

18

be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

How transfer in consideration of debt, or subject to future payment, &c., to be charged.

24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty.

Valuation in case of annuity, &c.

25. Where an instrument is executed to secure the payment of an annuity, or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument, or the consideration for such conveyance (as the case may be), shall, for the purposes of this Act, be deemed to be—

(a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount;

(b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years next after the date of such instrument or conveyance; and

(c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the total amount which will or may be payable as aforesaid during the period of twelve years next after the date of such instrument or conveyance.

Stamp where value of subject-matter is indeterminate.

26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before this Act comes into force) could not have been, ascertained, at the date of its execution or first

first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient.

27. The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Facts affecting duty to be set forth in instrument.

28. (a) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

Direction as to duty in case of certain conveyances.

(b.) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(c.) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(d.) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole, or any part, thereof, to any other person or persons, and the property is in consequence conveyed by the original

seller.

seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration, and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers :

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(e) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller ; or where such duty would exceed five rupees, with a duty of five rupees.

E.—Duty by whom payable.

Duties by
whom pay-
able.

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—

(a) in the case of any instrument described in numbers 2, 11, 13, 14, 15, 24, 28, 29, 30, 41, 53, 54, 55, 57 and 60 (a) and (b) of the first schedule—by the person drawing, making or executing such instrument :

(b) in the case of a policy of insurance—by the insured :

(c) in the case of a conveyance—by the grantee :
in the case of a lease or agreement to lease—by the lessee or intended lessee :

(d) in the case of a counterpart of a lease—by the lessor :

(e) in

(e) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the property comprised therein, or when the partition is made in execution of an order passed by a Revenue-Authority, in such proportion as such Authority directs :

(f) in the case of an instrument of exchange—by the parties in equal shares ; and

(g) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

30. When any instrument, whether executed or not, and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

Adjudication
as to proper
stamp.

and may for that purpose require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly :

Collector
may call for
abstract and
evidence.

Provided that no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable ; and every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is charge-

Proviso.

able,

able, be relieved from any penalty he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

Certificate by
Collector.

31. When an instrument brought to the Collector under section thirty is in his opinion one of a description chargeable with duty, and

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section thirty, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

When such instrument is in his opinion not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped, or not chargeable with duty, as the case may be; and if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped :

Nothing in this section shall authorize the Collector to endorse—

any instrument executed or first executed in British India and brought to him after the expiration of one month from the date of its execution or first execution (as the case may be);

any instrument executed or first executed out of British India and brought to him after the expiration of three months after it has been first received in British India; or

any instrument chargeable with the duty of one anna, or any bill of exchange or promissory note, when brought to him after the drawing or execution thereof on paper not duly stamped.

32. Every

32. Every payment of a fee under section thirty shall be made in stamps, or cash, as the Governor General in Council may by rule direct.

Payment of fees under section 30 how made.

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

33. Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office except an officer of Police,

Examination and impounding of instruments.

before whom any instrument chargeable in his opinion with duty is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed :

Provided that nothing herein contained shall be deemed to require any Magistrate or Judge of a criminal Court to examine or impound any instrument coming before him in the course of any proceeding other than a proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates Act :

Provided also that, in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

The Local Government may from time to time, in cases of doubt, determine who shall be deemed to be, for the purpose of this section, persons in charge of public offices.

34. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having

Instruments not duly

stamped inadmissible in evidence, &c

having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped :

Proviso.

Provided that—

Instruments admissible on payment of duty and penalty,

1st, any such instrument, not being an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or (in the case of an instrument insufficiently stamped) of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion ;

and in certain criminal proceedings

2nd, nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a criminal Court other than a proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure, or chapter eighteen of the Presidency Magistrates Act ;

Admission of instrument not to be questioned.

3rd, when an instrument has been admitted in evidence, such admission shall not, except as provided in section fifty, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Instruments impounded how dealt with

35. When the person impounding an instrument under section thirty-three has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section thirty-four, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of the duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

In every other case, the person so impounding an instrument shall send it in original to the Collector.

Collector's power to refund penalty

36. When a copy of an instrument is sent to a Collector under the first paragraph of section thirty-five,

five, he may, if he thinks fit, upon application made to him in this behalf, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument, or

paid under
section 35,
1st para.

when such instrument has been impounded only because it has been written in contravention of section twelve, or section thirteen, he may refund the whole penalty so paid.

37. When the Collector impounds any instrument under section thirty-three, or receives any instrument sent to him under the second clause of section thirty-five, he shall adopt the following procedure.—

Collector's
power to
stamp instru-
ments im-
pounded

(a) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable (as the case may be), and shall upon application made to him in this behalf deliver such instrument to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct.

(b.) If the Collector is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or if ten times the amount of the proper duty or of the deficient portion thereof exceeds five rupees, then such penalty, not less than five rupees and not more than ten times the amount of such duty or portion, as he thinks fit:

Provided that, when such instrument has been impounded only because it has been written in contravention of section twelve or section thirteen, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

Every certificate under clause (a) of this section shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

Nothing in this section applies to an instrument chargeable with a duty of one anna only, or to a bill of exchange or promissory note.

Instruments
unduly
stamped by
accident.

38. If any instrument chargeable with duty and which is not duly stamped is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections thirty-three and thirty-seven, receive such amount and proceed as next hereinafter prescribed.

Nothing in this section applies to an instrument chargeable with a duty of one anna only or to a bill of exchange or promissory note.

Endorsement
of instru-
ments on
which duty
has been
paid under
section 34,
37 or 38.

39. When the duty and penalty (if any) leviable in respect of any instrument have been paid under section thirty-four, section thirty-seven or section thirty-eight, the person admitting such instrument in evidence, or the Collector (as the case may be), shall certify by endorsement thereon that the proper duty or (as the case may be) the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct :

Provided that no instrument which has been admitted in evidence upon payment of duty and a penalty under section thirty-four shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate :

Provided

Provided also that nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3.

40. The payment of a penalty under this chapter in respect of an instrument shall not bar the prosecution of any person who appears to have committed an offence against the stamp-law in respect of such instrument:

Prosecution for offence against stamp law.

But no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

Proviso.

41. When any duty or penalty has been paid, under section thirty-four, section thirty-seven or section thirty-eight, by any person in respect of an instrument, and by agreement, or under the provisions of section twenty-nine or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid; and for the purpose of such recovery any certificate granted in respect of such instrument under section thirty-nine shall be conclusive evidence of the matters therein certified.

Persons paying duty or penalty may recover same in certain cases.

42. When any penalty is paid under section thirty-four or thirty-seven, the Chief Controlling Revenue-Authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

Remission of penalty paid under section 34 or 37.

43. If any instrument sent to a Collector under the second paragraph of section thirty-five be lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

Non-liability for loss of instruments sent under section 35.

When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such first-

Copy may be made of instruments so sent.

mentioned

mentioned person and authenticated by the person impounding such instrument.

Power of
payee to
stamp bills,
notes and
cheques re-
ceived by him
unstamped

44. When any bill of exchange or promissory note chargeable with the duty of one anna, or any cheque, is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and upon cancelling the same in manner hereinbefore provided may pay the sum payable upon such bill, note or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, note or cheque shall, so far as respects the duty, be deemed good and valid.

But nothing herein contained shall relieve any person from any penalty he may have incurred in relation to such bill, note or cheque.

CHAPTER V.

REFERENCE AND REVISION.

Procedure
where Col-
lector feels
doubt as to
duty charge-
able

45. If any Collector acting under section thirty, section thirty-seven or section thirty-eight feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-Authority, and such Authority shall consider the case and send a copy of its decision to the Collector, and he shall proceed to assess and charge the duty (if any) in conformity with such decision.

Reference by
Revenue-
Authority to
High Court

46. The Chief Controlling Revenue-Authority may state any case referred to it under section forty-five or otherwise coming to its notice and refer such case with its own opinion thereon, if the case arises in the territories for the time being administered by the Governor of Fort Saint George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay as the case may be: if it arises in the North-Western Provinces or Oudh—to the High Court of Judicature for the North-Western Provinces: if it arises in the territories for
the

the time being administered by the Lieutenant-Governor of the Panjáb—to the Chief Court of the Panjáb : if it arises in the Central Provinces—to the High Court of Judicature at Bombay ; and if it arises in any other part of British India—to the High Court of Judicature at Fort William.

Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

47. If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-Authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

Power of Court to call for further particulars.

48. The High Court or Chief Court, upon the hearing of any such case, shall decide the questions raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded : and it shall send to the Revenue-Authority by which the case was stated, a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Revenue-Authority shall, on receiving such copy, dispose of the case conformably to such judgment.

Procedure in disposing of reference.

49. If any Court other than a Court mentioned in section forty-six feels doubt as to the amount of duty to be paid in respect of any instrument under the first proviso to section thirty-four, the Judge may draw up a statement of the case and refer it with his own opinion thereon for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue-Authority, he would under section forty-six refer the same, and such Court shall deal with the case as if it had been referred under section forty-six, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

Reference by other Courts to High Court.

References made under this section, when made by a Court subordinate to a District Court, shall be made through the District Court, and when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

Revision of certain decisions of Courts regarding the sufficiency of stamps.

50. When any Court in the exercise of civil or revenue jurisdiction makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section thirty-four, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration; and if it is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section thirty-four, or without the payment of a higher duty and penalty than those paid, may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is to produce the same, and may impound the same when produced.

When any declaration has been recorded under this section, the Court recording the same shall send a copy thereof to the Collector and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument; and thereupon the Collector may, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section thirty-nine, or in section forty, prosecute any person for any offence against the stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that no such prosecution shall be instituted where the amount (including duty and penalty) which according to the determination of such Court was payable in respect of the instrument under section thirty-four is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty:

Provided

Provided also that, except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section thirty-nine.

CHAPTER VI.

ALLOWANCES FOR SPOILED STAMPS AND STAMPS NO LONGER REQUIRED.

51. Subject to such rules as may be made by the Governor General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, namely :—

Allowance
for spoiled
stamps.

(a.) The stamp on any paper inadvertently and undesignedly spoiled, obliterated or by any means rendered unfit for the purpose intended, before any instrument written thereon is executed by any person :

(b.) The stamp used or intended to be used for any bill of exchange, cheque or promissory note, signed by or on behalf of the drawer or intended drawer, but not delivered out of his hands to the payee or intended payee, or any person on his behalf, or deposited with any person as a security for the payment of money, or in any way negotiated, issued or put in circulation, or made use of in any other manner, and which, being a bill of exchange or cheque, has not been accepted by the drawee, and provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange or cheque to be afterwards written thereon :

(c.) The stamp used or intended to be used for any bill of exchange, cheque or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange or cheque, may have been presented for acceptance or accepted or endorsed, or, being a pro-

missory

missory note, may have been delivered to the payee ; provided that another completed and duly stamped bill of exchange, cheque or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque or note :

(d.) The stamp used for any of the following instruments, that is to say—

- (1) an instrument executed by any party thereto, but afterwards found by a competent Court to be absolutely void in law from the beginning :
- (2) an instrument executed by any person, but afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended :
- (3) an instrument executed by any party thereto, but which, by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, or to advance any money intended to be thereby secured, cannot be completed so as to effect the intended transaction in the form proposed :
- (4) an instrument executed by any party thereto which, for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended :
- (5) an instrument executed by any party thereto which, by reason of the refusal of any person to act under the same, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose :
- (6) an instrument executed by any party thereto which becomes useless in consequence of the transaction intended to be thereby effect-

ed

ed being effected by some other instrument duly stamped :

- (7) an instrument executed by any party thereto which is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that, in the case of an executed instrument—

- (a) such instrument is given up to be cancelled :
 (b) the application for relief is made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, except where from unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, and in that case within six months after the date of execution of the substituted instrument, and except where the spoiled instrument has been sent out of British India, and in that case within six months after it has been received back in British India :

Provided also that, in the case of stamped paper not having any executed instrument written thereon, the application for relief is made within six months after the stamp has been spoiled as aforesaid.

52. When any person has inadvertently used, for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or when any stamp used for an instrument has been inadvertently rendered useless under section fourteen owing to such instrument having been written in contravention of the

Allowance
for misused
stamps.

provisions

provisions of section twelve, the Collector may, on application made within six months after the date of the instrument or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

Allowance under sections 51 and 52 how to be made.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof (a) other stamps of the same description and value, or, (b) if required, and he thinks fit, stamps of any other description to the same amount in value, or, (c) at his discretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

Allowance for stamps not required for use

54. When any person is possessed of a stamp which has not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction that it was purchased by such person with a *bona fide* intention to use it, and that he has paid the full price thereof, and that it was so purchased within the period of six months next preceding the date on which it is so delivered.

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

Powers to make rules relating to sale of stamps

55. The Local Government, subject to the control of the Governor General in Council, may make rules consistent herewith for regulating the supply and sale of stamps and stamped papers, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

Power to make rules generally to carry out Act.

56. The Governor General in Council may make rules consistent herewith to carry out generally the purposes of this Act.

57. All

57. All powers to make appointments, rules and orders conferred by this Act may be exercised from time to time as occasion requires.

Certain powers exercisable from time to time.

All rules made under this Act, other than rules made under section fifty-five, shall be published in the *Gazette of India*, and all rules made under section fifty-five shall be published in the local Gazette. All rules published as required by this section shall, upon such publication, have the force of law.

Publication of rules.

58. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

Obligation to give receipt in certain cases.

59. Nothing herein contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to Court-fees.

Saving as to Court-fees.

60. Every Local Government shall cause this Act to be carefully translated into the principal vernacular languages of the territories administered by it. A full alphabetical index shall be added to every such translation, and the translation and index shall be printed and sold to the public at a price not exceeding four annas per copy.

Act to be translated, indexed and sold cheaply.

CHAPTER VIII.

CRIMINAL OFFENCES AND PROCEDURE.

61. Any person drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange, cheque or promissory note without the same being duly stamped,

Penalty for executing, &c., instrument not duly stamped.

any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, and

any person voting or attempting to vote under any proxy not duly stamped,

shall for every such offence be punished with fine which may extend to five hundred rupees :

Provided that, when any penalty has been paid in respect of any instrument under section thirty-four, section thirty-seven or section fifty, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

Penalty for failure to cancel adhesive stamp.

62. Any person required by section eleven to cancel an adhesive stamp and failing to cancel such stamp in manner prescribed by that section, shall be punished with fine which may extend to one hundred rupees.

Penalty for omission to comply with provisions of section 27.

63. Any person who, with intent to defraud the Government of any duty,

(a) executes any instrument in which all the facts and circumstances required by section twenty-seven to be set forth in such instrument are not fully and truly set forth, or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits, fully and truly to set forth therein all such facts and circumstances,

shall be punished with fine which may extend to five thousand rupees.

Penalty for refusal to give receipt and for devices to evade duty on receipts

64. Any person who, being required under section fifty-eight to give a receipt, refuses or neglects to give the same, or who, with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered, shall be punished with fine which may extend to one hundred rupees.

Penalty for not making out policy,

65. Every person who—

(a) receives, or takes credit for, any premium or consideration for any contract of insuran

and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance; or

- (b) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

or making,
&c., any
policy not
duly stamped.

shall be punished with fine which may extend to two hundred rupees.

66. Any person drawing or executing a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punished with fine which may extend to one thousand rupees.

Penalty for
not drawing
full number
of bills or
marine
policies pur-
porting to
in sets.

67. Whoever, with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, and whoever, knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same,

Penalty for
post-dating
bills, &c.;

and whoever, with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force,

for other
devices to
defraud the
revenue.

shall be punished with fine which may extend to one thousand rupees.

68. Any person appointed to sell stamps who disobeys any rule made under section fifty-five, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for
breach of rule
relating to
sale of stamps
and for un-
authorized

Institution
and conduct
of prosecu-
tions

69. No prosecution in respect of any offence punishable under this Act, or the General Stamp Act, 1869, or any Act thereby repealed, shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

The Chief Controlling Revenue-Authority, or any officer authorized by it in this behalf, may stay any such prosecution or compound any such offence.

Jurisdiction
of Magis-
trates.

70. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Place of trial.

71. Every such offence committed in respect of any instrument may be tried in any district or Presidency-town in which such instrument is found, as well as in any district or Presidency-town in which such offence might be tried under the law relating to criminal procedure for the time being in force.

Operation of
other laws
not barred.

72. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it :

Provided that no person shall be punished twice for the same offence.

SCHEDULE I.
STAMP-DUTY ON INSTRUMENTS.
(See section 5).

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
1. ACKNOWLEDGMENT of a debt exceeding twenty rupees in amount or value, written or signed by or on behalf of a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper, when such book or paper is left in the creditor's possession	One anna.
2. ADMINISTRATION-BOND ADOPTION-DEED ... See <i>Instrument, No. 38.</i>	The same duty as a Security-Bond (No. 14).
3. AFFIDAVIT or declaration in writing on oath or affirmation made before a person authorized by law to administer an oath See <i>Exemptions, Schedule II (No. 1).</i>	One rupee.
4. AGREEMENT TO LEASE	The same duty as a Lease (No. 39).
5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT See <i>Exemptions, Schedule II (No. 2).</i>	(a) If relating to the sale of any Government security, share in a Company or Association or Bill of Exchange One anna. (b) Whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his rights therein to the Government, and to accept rights in other land in exchange for the right so relinquished Four annas. (c) If not otherwise provided for by this Act Eight annas.
6. APPOINTMENT , in execution of a power, whether of trustees or of property moveable or immovable, where made by any writing not being a Will	Fifteen rupees.

SCHEDULE I—continued.

STAMP-DUTY ON INSTRUMENTS—continued.

(See section 5).

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY.
<p>7. APPRAISEMENT or valuation made otherwise than under an order of the Court in the course of a suit</p> <p><i>See Exemptions, Schedule II (Nos. 3 & 4)</i></p>	<p>The same duty as an Award (No. 10).</p>
<p>APPRENTICESHIP-DEED</p>	<p><i>See Instrument, No. 31.</i></p>
<p>8. ARTICLES OF ASSOCIATION OF A COMPANY</p>	<p>Twenty-five rupees.</p>
<p>9. ARTICLES OF CLERKSHIP or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an Attorney in any High Court</p>	<p>Two hundred and fifty rupees</p>
<p>ASSIGNMENT</p>	<p><i>See Conveyance, No. 21 and Transfer, No. 60.</i></p>
<p>AUTHORITY TO ADOPT</p>	<p><i>See Instrument, No. 38.</i></p>
<p>10. AWARD, that is to say, any decision in writing by an arbitrator or umpire on a reference made otherwise than by an order of the Court in the course of a suit</p>	<p>(a.) Where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000 ... The same duty as a Bond (No. 13) for such amount.</p> <p>(b.) In any other case ... Five rupees.</p>
<p><i>See Exemption, Schedule II (No. 6).</i></p>	

SCHEDULE I—continued.

STAMP-DUTY ON INSTRUMENTS—continued.

(See section 5).

DESCRIPTION OF INSTRUMENT.		PROPER STAMP-DUTY.		
(a) When payable on demand and the amount exceeds Rs. 20 ...		One anna.		
(b) When payable otherwise than on demand, but not more than one year after date or sight.		If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
If the amount of the Rs bill or note does not exceed 200		Rs. A. P.	Rs. A. P.	Rs. A. P.
If it exceeds 200 and does not exceed 400		0 2 0	0 1 0	0 1 0
" 400 600		0 4 0	0 2 0	0 2 0
" 600 1,000		0 6 0	0 3 0	0 2 0
" 1,000 1,200		0 10 0	0 5 0	0 4 0
" 1,200 1,600		0 12 0	0 6 0	0 4 0
" 1,600 2,500		1 0 0	0 8 0	0 6 0
For every Rs 2,500 or part thereof in excess of Rs 2,500 up to Rs. 10,000 ..		1 8 0	0 12 0	0 8 0
For every Rs 5,000 or part thereof in excess of Rs. 10,000 up to Rs 30,000 ..		3 0 0	1 8 0	1 0 0
And for every Rs. 10,000 or part thereof in excess of Rs. 30,000		6 0 0	3 0 0	2 0 0
(c). When payable at more than one year after date or sight		The same duty as a Bond (No. 13) for the amount of such bill or note.		

SCHEDULE I—continued.

STAMP-DUTY ON INSTRUMENTS—continued.

(See section 5).

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
12. BILL OF LADING ... <i>See Exemption, Schedule II (No. 7).</i>	Four annas. If a Bill of Lading is drawn in parts, the proper stamp therefor must be borne by each one of the sets.
13. BOND (not otherwise provided for by this Act) ...	When the amount or value secured does not exceed ... Rs. 10 Two annas.
<i>See Administration-Bond (No. 2), Customs-Bond (No. 24), Indemnity-Bond (No. 28), Security-Bond (No. 11).</i>	When such amount or value exceeds Rs. 50, but does not exceed 50 Four annas.
<i>See Exemptions, Schedule II (No. 8).</i>	When such amount or value exceeds Rs. 50, but does not exceed 100 Eight annas
	and for every Rs. 100 or part thereof in excess of Rs. 100 up to 1,000 Eight annas.
	and for every Rs. 500 or part thereof in excess of 1,000 Two rupees eight annas.
14. BOND OR MORTGAGE-DEED executed by way of security for the due execution of an office, or to account for money received by virtue thereof ...	(a.) When the amount secured does not exceed 1,000 The same duty as a Bond (No. 13).
<i>See Exemptions, Schedule II (Nos. 8 and 12).</i>	(b.) In any other case .. Five rupees.
15. BOTTOMRY-BOND , that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage ...	The same duty as a Bond (No. 13).
16. CERTIFICATE OF SALE granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer ...	The same duty as a Conveyance (No. 21) for a consideration equal to the amount of the purchase-money.

SCHEDULE I—continued.

STAMP-DUTY ON INSTRUMENTS—continued.

(See section 5).

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
17. CERTIFICATE OR OTHER DOCUMENT evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any Company or Association, or to become proprietor of shares, scrip or stock in or of any Company or Association	One anna.
18. CHARTER-PARTY , that is to say, any instrument (except an agreement for the hire of a tug or steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer	One rupee
19. CHEQUE , for an amount exceeding twenty rupees	One anna.
20. COMPOSITION-DEED , that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors	Ten rupees
21. CONVEYANCE , not being a TRANSFER mentioned in No 60	<div> When the amount of the consideration for such conveyance as set forth therein does not exceed Rs 5 Eight annas. </div> <div> When it exceeds Rs 50 but does not exceed ... 100 One rupee, </div> <div> For every Rs 100 or part thereof in excess of Rs 100 up to ... 1,000 One rupee. </div> <div> and for every Rs 500 or part thereof in excess of 1,000 Five rupees </div>

See Exemptions, Schedule II (Nos. 5 and 17).

SCHEDULE I—continued.

STAMP-DUTY ON INSTRUMENTS—continued.

(See section 5).

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
CO-PARTNERSHIP ... See <i>Instrument, No. 32.</i>	
22. COPY OR EXTRACT, certified to be a true copy or extract, by or by order of any public officer and not chargeable under the law for the time being in force relating to Court-fees ... <i>See Exemptions, Schedule II (Nos. 9 and 10).</i>	(a.) If the original was not chargeable with duty, or if the duty with which it was chargeable does not exceed one rupee ... Eight annas. (b.) In any other case ... One rupee.
23. COUNTERPART OR DUPLICATE of any instrument chargeable with duty, and in respect of which the proper duty has been paid ...	(a.) If the duty with which the original instrument is chargeable does not exceed one rupee ... The same duty as is payable on the original. (b.) In any other case ... One rupee.
24. CUSTOMS-BOND ...	The same duty as a Security-Bond (No. 14).
25. DECLARATION OF ANY TRUST of or concerning any property, when made by any writing not being a will ...	Fifteen rupees.
26. DELIVERY-ORDER IN RESPECT OF GOODS, that is to say, any instrument entitling any person therein named, or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees ...	One anna.
DEPOSIT OF TITLE-DEEDS ...	See <i>Instrument, No. 29.</i>
DISSOLUTION OF PARTNERSHIP ...	See <i>Instrument, No. 33.</i>
DUPLICATE ...	See <i>Counterpart, No. 23.</i>

SCHEDULE I—*continued*.STAMP-DUTY ON INSTRUMENTS—*continued*.

(See section 5).

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
27. ENTRY AS AN ADVOCATE, VAKIL OR ATTORNEY ON THE ROLL OF ANY HIGH COURT in exercise of powers conferred on such Court by letters patent ... <i>See Exemption, Schedule II (No. 11).</i>	In the case of an Advocate or Vakil Five hundred rupees. In the case of an Attorney ... Two hundred and fifty rupees
EXCHANGE ...	<i>See Instrument, No. 35.</i>
EXTRACT ...	<i>See Copy, No. 22.</i>
FURTHER CHARGE	<i>See Instrument, No. 30.</i>
GIFT ...	<i>See Instrument, No. 36.</i>
28. INDEMNITY-BOND ...	The same duty as a Security-Bond (No. 14).
INSPECTORSHIP-DEED ...	<i>See Composition-deed, No. 20.</i>
29. INSTRUMENT EVIDENCING AN AGREEMENT TO SECURE THE RE-PAYMENT OF A LOAN made upon the deposit of title-deeds or other valuable security, or upon the hypothecation of moveable property ...	(a.) When such loan is repayable more than three months, but not more than one year, from the date of such instrument. The same duty as a Bill of Exchange (No. 11 (b)) for the amount secured. (b.) When such loan is repayable not more than three months from the date of such instrument. Half the duty payable on a Bill of Exchange (No. 11 (b)) for the amount secured.
30. INSTRUMENT IMPOSING A FURTHER CHARGE ON MORTGAGED PROPERTY ...	(a.) When the original mortgage is one of the description referred to in No. 44, clause (a), of this schedule. The same duty as a Conveyance (No. 21) for a consideration equal to the amount secured by such instrument. (b.) When such mortgage is one of the description referred to in No. 44, clause (b), of this schedule. The same duty as a Bond (No. 13) for the amount secured by such instrument.
31. INSTRUMENT OF APPRENTICESHIP , including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employ-	

SCHEDULE I—continued.

STAMP-DUTY ON INSTRUMENTS—continued.

(See section 5)

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY
ment except articles of partnership (No 9 of this schedule)	Five rupees
<i>See Exemption, Schedule II (No. 12(c))</i>	
32. INSTRUMENT OF CO-PARTNER- SHIP	Ten rupees
33. INSTRUMENT OF DISSOLUTION OF PARTNERSHIP	Five rupees
34. INSTRUMENT OF DIVORCE , that is to say, any instrument by which any person effects the dissolution of his marriage	One rupee.
35. INSTRUMENT OF EXCHANGE of any property	The same duty as a Convey- ance (No 21) for a consid- eration equal to the value of the property of greater value as set forth in such instrument
36. INSTRUMENT OF GIFT (OTHER THAN A SETTLE- MENT OR WILL)	The same duty as a Convey- ance (No 21) for a consid- eration equal to the value of the property as set forth in such instrument.
37. INSTRUMENT OF PARTITION	The same duty as a Bond (No 13) for the amount of the value of the property divided as set forth in such instrument.
38. INSTRUMENT (OTHER THAN A WILL) CONFER- RING OR PUR- PORTING TO CON- FER AN AUTHOR- ITY TO ADOPT	Ten rupees.
INSURANCE .. See Policy, No 49.	

SCHEDULE I—*continued*.STAMP-DUTY ON INSTRUMENTS—*continued*.

(See section 5).

DESCRIPTION OF INSTRUMENT	PROPER STAMP DUTY
<p>39 LEASE <i>See Appointment to lease (No 9)</i> <i>See Exemptions, Schedule II (No 13).</i></p> <p>(a) Where by such lease the rent is fixed and no premium is paid or delivered and such lease purports to be for a term— of less than one year of not less than one year but not more than three years exceeding three years</p>	<p>The same duty as a Bond (No 13) for the whole amount payable or deliverable under such lease.</p> <p>The same duty as a Bond (No 13) for the average annual rent received</p> <p>The same duty as a Conveyance (No 21) for a consideration equal to the amount or value of the average annual rent reserved</p>
<p>(b) Where by such lease the rent is fixed and no premium is paid or delivered and such lease does not purport to be for any definite term ..</p>	<p>The same duty as a Conveyance (No 21) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long</p>
<p>(c) Where the lease is granted for a fine or premium and where no rent is reserved ..</p>	<p>The same duty as a Conveyance (No 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease.</p>
<p>(d) Where the lease is granted for a fine or premium in addition to rent reserved ...</p>	<p>The same duty as a Conveyance (No 21) for a consideration equal to the amount or value of such fine or premium as set forth in the lease, in addition to the duty which would have been pay-</p>

SCHEDULE I—continued.

STAMP-DUTY ON INSTRUMENTS—continued.

(See section 5).

DESCRIPTION OF INSTRUMENT	PROPER STAMP DUTY
	<p>able on such lease if no fine or premium had been paid or delivered</p> <p>Provided that, when an agreement to lease is stamped with the <i>ad valorem</i> stamp required for a lease and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas</p>
<p>40. LETTER OF ALLOTMENT OF SHARES in any Company, or proposed Company or in respect of any loan to be raised by any Company or proposed Company ...</p>	<p>One anna</p>
<p>41. LETTER OF CREDIT, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn</p>	<p>One anna</p>
<p>42. LETTER OF LICENSE, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion</p>	<p>Ten rupees.</p>
<p>43. MEMORANDUM OF ASSOCIATION OF A COMPANY</p>	<p>Fifteen rupees.</p>
<p>44. MORTGAGE-DEED not provided for by No 14, No 15, No 29 or No 55 of this schedule</p> <p>See Exemptions, Schedule II (No 12 and No 14 (b))</p>	<p>(a) When at the time of execution possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given ...</p> <p>The same duty as a Conveyance (No 21) less consideration equal to the amount secured by such deed.</p>

SCHEDULE I—*continued.*STAMP-DUTY ON INSTRUMENTS—*continued.*

(See section 5).

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
44. MORTGAGE-DEED not provided for by No. 14, No. 15, No. 29 or No. 55 of this schedule— <i>continued.</i> <i>Sec Exemptions, Schedule II (No. 12 and No. 14 (b)).</i>	The same duty as a B (No. 13) for the amo secured by such deed.
<i>(b)</i> When at the time of execution possession is not given or agreed to be given as aforesaid	
45. NOTARIAL ACT , that is to say, any instrument, endorsement, note, attestation, certificate or entry made or signed by a Notary Public in the execution of the duties of his office or by any other person lawfully acting as a Notary Public	One rupee.
46. NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal of any goods, stock or marketable security exceeding in value twenty rupees	One anna.
47. NOTE OF PROTEST BY THE MASTER OF A SHIP	Eight annas.
PARTITION	Sec <i>Instrument, No. 37.</i>
PARTNERSHIP	Sec <i>Instrument, Nos. 82 and 33.</i>
48. PETITION FOR LEAVE TO FILE A SPECIFICATION OF AN INVENTION , or for the extension of the term of the exclusive privilege of making or using or selling such invention in India	One hundred rupees.

SCHEDULE I—continued.

STAMP-DUTY ON INSTRUMENTS—continued.

(See section 5).

DESCRIPTION OF INSTRUMENT		PROPER STAMP DUTY	
		If drawn singly	If drawn in dupli- cate for each part
		Rs. A P.	Rs. A P.
49. POLICY OF INSURANCE	(a) In the case of Sea insurance		
	When the amount insured does not exceed Rs. 1,000	0 4 0	0 2 0
	And for every fur- ther sum of Rs. 1,000 or part thereof in excess of 1,000	0 4 0	0 2 0
	(b) In the case of any other insurance—		
<i>See Exemption, Schedule II (No 14 (a))</i>	When the amount insured does not exceed Rs. 1,000	0 6 0	0 3
	And for every fur- ther sum of Rs. 1,000 or part thereof in excess of 1,000	0 6 0	0 3 0
	(a) When executed for the sole purpose of procuring the presentation of one or more documents for re- gistration in relation to a single transaction	Light annas	
50. POWER OF-ATTORNEY , not being a proxy chargeable under No 51	(b) When authorizing one per- son or more to act in a single transaction other than that mentioned in (a)	One rupee	
	(c) When authorizing not more than five persons to act jointly and severally in more than one transaction or generally	Five rupees.	
	(d) When authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally	Ten rupees.	
	(e) In any other case	One rupee for each person authorized	
	<i>Explanation.</i> —For the purposes of this number more persons than one when belonging to the same firm shall be deemed to be one person		

SCHEDULE I—continued.

STAMP-DUTY ON INSTRUMENTS—continued.

(See section 5).

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
PROMISSORY NOTE See <i>Bill of Exchange, No. 11.</i>	
PROTEST , that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note ... See <i>Notarial Act, No. 45.</i>	
PROTEST BY THE MASTER OF A SHIP , that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such ... See <i>Notarial Act, No. 45.</i>	
51. PROXY empowering any person to vote at any one meeting of—	
(a.) Members of a Company whose stock or funds is or are divided into shares and transferable :	... One anna.
(b.) Municipal Commissioners :	
(c.) Proprietors, Members or Contributors to the funds of any Institution ...	
52. RECEIPT FOR ANY MONEY OR OTHER PROPERTY THE AMOUNT OR VALUE OF WHICH EXCEEDS TWENTY RUPEES ...	... One anna.
See <i>Exemptions, Schedule II (No. 15).</i>	

SCHEDULE I—continued.

STAMP-DUTY ON INSTRUMENTS—continued.

(See section 5).

DESCRIPTION OF INSTRUMENT	PROPER STAMP DUTY.
53. RE-CONVEYANCE OF MORTGAGED PROPERTY . (a) If the consideration for which the property was mortgaged does not exceed Rs ... 1,000 (b) In any other case .	The same duty as a Conveyance (No 21) for the amount of such consideration is set forth in the conveyance. Ten rupees.
54. RELEASE , that is to say, any instrument whereby a person renounces a claim upon another person or against any specified property ... (a) If the amount or value of the claim does not exceed . 1,000 (b) In any other case ...	The same duty as a Bond (No 13) for such amount or value as set forth in the schedule. Five rupees.
55. RESPONDENTIA-BOND , that is to say, any instrument securing a loan on the cargo laden on to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination	The same duty as a Bond (No 13).
56. REVOCATION OF ANY TRUST of or concerning any property by any instrument other than a Will	Ten rupees.
57. SETTLEMENT	The same duty as a Bond (No. 13) for a sum equal to the amount or value of the property settled as set forth in such settlement.
58. SHIPPING-ORDER for or relating to the conveyance of goods on board of any vessel	One anna.
SPECIFICATION . . See <i>Petition, No. 48.</i>	

SCHEDULE I—*concluded.*STAMP-DUTY ON INSTRUMENTS—*concluded.*

(See section 5).

DESCRIPTION OF INSTRUMENT	PROPER STAMP-DUTY.
59. SURRENDER OF LEASE ... <i>See Exemption, Schedule II (No 16)</i>	(a.) When the duty with which the lease is chargeable does not exceed five rupees ... The duty with which such lease is chargeable (b.) In any other case ... Five rupees.
60. TRANSFER ... <i>See Exemption, Schedule II (No 17).</i>	(a.) Of shares in a Company or Association ... One quarter of the duty payable on a Conveyance (No. 21). (b.) Of any interest secured by a Bond, Lease, Mortgage-deed or Policy of Insurance - 1. If the duty on such Bond, Lease, Mortgage-deed or Policy does not exceed five rupees ... The duty with which such Bond, Lease, Mortgage-deed or Policy of Insurance is chargeable. 2. In any other case ... Five rupees (c.) Of any property under the Administrator General's Act, 1874, section 31 ... Ten rupees. (d.) Of any trust-property from one trustee to another trustee without consideration ... Five rupees.
TRUST ... <i>See Declaration, No 25. Revocation, No. 36.</i>	
VALUATION ... <i>See Appraisement, No. 7.</i>	
61. WARRANT FOR GOODS , that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be ...	Four annas.

SCHEDULE II.

INSTRUMENTS EXEMPTED FROM STAMP-DUTY.

1. Affidavit or declaration in writing when made—

- (a) as a condition of enlistment under the Indian Articles of War ;
- (b) for the immediate purpose of being filed or used in any Court or before the officer of any Court ; or
- (c) for the sole purpose of enabling any person to receive any pension or charitable allowance.

2. Agreement or memorandum of agreement—

- (a) for or relating to the sale of goods or merchandize exclusively, not being a note or memorandum chargeable under No. 16 of schedule I ;
- (b) for service in British Burma under the Chief Commissioner of that Province entered into between Natives of India emigrating to British Burma and the Superintendent of State Emigration or other Government officer acting as representative of the said Chief Commissioner ;
- (c) made by raiyats for the cultivation of the poppy for Government ;
- (d) made in the form of tenders to the Government of India for or relating to any loan ;
- (e) made regarding the occupancy of land denoted by a survey-number, and the payment of revenue therefor, under Bombay Act I of 1865 ;
- (f) made under the European Vagrancy Act, 1874, section 17.

3. Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.

4. Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.

5. Assignment of copyright by entry made under Act No. XX of 1847, section 5.

6. Award under Bombay Act VI of 1873, section 81, or Bombay Act III of 1874, section 18.

7. Bill of lading, when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1875, and are to be delivered at another place within the limits of the same port.

8. Bond when executed by—

- (a) the sureties of middlemen (lambardárs or khattadárs) taking advances for the cultivation of the poppy for Government ;
- (b) headmen

SCHEDULE II—*continued.*INSTRUMENTS EXEMPTED FROM STAMP-DUTY—*continued.*

- (b) headmen nominated under rules framed in accordance with Bengal Act III of 1876, section 99, for the due performance of their duties under that Act ;
 - (c) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.
9. Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.
10. Copy of registration of emigrants furnished under section 27 or section 29 of the Indian Emigration Act, 1871.
11. Entry—
- (a) of an advocate, vakil or attorney on the roll of any High Court, when he has previously been enrolled in a High Court established by Royal Charter ;
 - (b) on the roll of any High Court, as an attorney, of an articulated clerk bound as such before this Act comes into force.
12. Instruments—
- (a) executed by persons taking advances under the Land Improvement Act, 1871, or by their sureties, as security for the repayment of such advances ;
 - (b) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money received by virtue thereof ;
 - (c) of apprenticeship executed by a Magistrate under Act XIX of 1850 or by which a person is apprenticed by or at the charge of any public charity.
13. Leases and Counterparts—
- (a) Leases of fisheries granted under the Burma Fisheries Act, 1875 ;
 - (b) Lease, executed in the case of a cultivator without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the annual rent reserved does not exceed one hundred rupees ;
 - (c) Counterpart of any lease granted to a cultivator.
14. Letter—
- (a) of cover or engagement to issue a policy of insurance :
Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose except to compel the delivery of the policy therein mentioned ;
 - (b) of hypothecation accompanying a bill of exchange.

15. Receipt—

SCHEDULE II—concluded.

INSTRUMENTS EXEMPTED FROM STAMP-DUTY—concluded.

15. Receipt—

- (a) endorsed on or contained in any instrument duly stamped, or exempted under this schedule, No. 18, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest or annuity or other periodical payment thereby secured ;
- (b) for any payment of money without consideration ;
- (c) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St. George and Bombay) of inám lands ;
- (d) for pay by non-commissioned officers or soldiers of Her Majesty's Army, or Her Majesty's Indian Army, when serving in such capacity ;
- (e) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity ;
- (f) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity ;
- (g) given by a headman or lambardár for land-revenue or taxes collected by him ;
- (h) given for money or securities for money deposited in the hands of any banker, to be accounted for :

Provided the same be not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for :

Provided also, that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of or in any Company or Association, or proposed or intended Company or Association.

16. Surrender of lease when such lease is exempted from duty.

17. Transfers by endorsement—

- (a) of a bill of exchange, cheque or promissory note ;
- (b) of a bill of lading ;
- (c) of a policy of insurance ;
- (d) of mortgages of rates and taxes authorized by any Act for the time being in force in British India ;
- (e) of securities of the Government of India ;
- (f) of a warrant for goods (No. 61 of schedule I).

General Exemption.

- 18. Any instrument executed by, or on behalf of, or in favour of, Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.**

SCHEDULE III.

ACTS REPEALED.

Number and year.	Subject or short title.	Extent of repeal.
XX of 1847 ...	Copyright	In section five, the words "without being subject to any stamp or duty."
X of 1866 ...	The Indian Companies Act.	In section eleven, the words "shall bear the same stamp as if it were a deed, and." In section sixteen, the words "they shall bear the same stamp as if they were contained in a deed."
XVIII of 1869 ...	The General Stamp Act.	The whole.
VII of 1871 ...	The Indian Emigration Act.	In sections twenty-seven and twenty-nine, the words "which shall not require a stamp."
XIX of 1873 ..	The North-Western Provinces Land-Revenue Act, 1873.	In section one hundred and eighty-three, the words "stamped or."
II of 1874 ...	The Administrator General's Act.	In section thirty-one, the words "bearing a stamp of ten rupees and."
IX of 1874 ...	The European Vagrancy Act.	In section seventeen, the words "may be on unstamped paper and."
XV of 1876 ...	Bombay Municipal Debentures.	In section two, the words "and no such indorsement shall be chargeable with any stamp-duty."

ACT No. II OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 19th February 1879).

An Act to make better provision for recording evidence in the Central Provinces.

WHEREAS, in order to provide for the recording of evidence in civil suits in the Central Provinces by the Judge in English or in his own language, it is expedient to amend the Central Provinces Laws Act, 1875; It is hereby enacted as follows:—

1. This Act may be called “The Central Provinces Laws Act, 1879;”

And it shall come into force at once.

2. The following sections shall be deemed to have been added to the said Central Provinces Laws Act, 1875, immediately after the Code of Civil Procedure came into force, that is to say:—

“11. Sections 184, 185 and 189 of the Code of Civil Procedure are hereby repealed.

“12. For sections 182, 190 and 191 of the same Code, the following shall be substituted (namely):—

“182. A note of the essential points of the evidence of each witness shall be made at the time, and in the course, of oral examination, by the Judge, in his own language, or in English if he is sufficiently acquainted with that language, and such note shall be filed with, and form part of, the record of the case.

“190. If

[Price one anna and three pies.]

Preamble.

Short title.

Commencement.

Addition to Act XX of 1875.

Local repeal of sections 184, 185 and 189 of the Code of Civil Procedure.

Sections substituted for sections 182, 190 and 191 of same Code.

Note of evidence to be taken.

Judge unable
to make note
to record
reason of his
inability.

“‘190. If the Judge be prevented from making a note as above required, he shall record the reason of his inability to do so, and shall cause such note to be made in writing from his dictation in open Court, and shall sign the same, and such note shall form part of the record.

Power to use
note made by
Judge dying
or removed
before con-
clusion of
suit.

“‘191. When the Judge making a note of the evidence, or causing one to be made as above required, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such note as if he himself had made it or caused it to be made.’ ”

ACT No. III OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 8th March 1879).

An Act to authorize the destruction of Useless Records.

WHEREAS it is expedient to provide for the destruction or other disposal of useless records, books and papers in Courts and Revenue-offices; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The Destruction of Records Act, 1879": it extends to the whole of British India; and it shall come into force at once.

Short title.
Local extent.
Commencement.

2. The High Court may, from time to time, make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of such High Court, or the Courts of civil and criminal jurisdiction subordinate thereto, as the High Court may consider useless or unworthy of being permanently preserved.

Power to High Court to make rules for disposal of records, &c.

So far as regards his own Court, the Court of Small Causes in Rangoon and the Courts of the Magistrates within the local limits of his ordinary civil jurisdiction, the Recorder of Rangoon shall, for the purposes of this section, be deemed to be a High Court.

3. Each of the High Courts of Judicature at Fort William, Madras and Bombay may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of

Similar power to Presidency High Courts with respect to documents in Insolvent Courts and Administrator General's office.

(a) the local Court for the relief of Insolvent Debtors held under the provisions of the eleventh and twelfth of Victoria, chapter twenty-one,

(b) the

[Price one anna and six pies.]

(b) the local Administrator General,
as the High Court may consider useless or unworthy of being permanently preserved.

Similar
power to
Chief Con-
trolling
Revenue-
Authority.

4. The Chief Controlling Revenue-Authority may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or in the custody of the Revenue Courts and offices as it may consider useless or unworthy of being permanently preserved.

Rules when
to have force
of law.

5. All rules made under this Act shall, after being confirmed by the Local Government and sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Validation
of rules as to
destruction
of docu-
ments.

6. All rules and orders heretofore made by a Local Government, a High Court or a Chief Controlling Revenue-Authority for the destruction or other disposal of useless records, books and papers belonging to or in the custody of any Court or Revenue-office shall be deemed to have had the force of law from the date on which they were made, and all such rules now in force shall continue to have the force of law until they are rescinded by rules made under this Act; and no suit or other proceeding shall be instituted, maintained or continued against any person for the disposal, by destruction or otherwise, of any records, books or papers in accordance with any such rules or with any order made by a Local Government, High Court or Chief Controlling Revenue-Authority.

Bar of suits.

Interpreta-
tion-clause.

7. In this Act "Chief Controlling Revenue-Authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces—the Board of Revenue: in the Presidency of Bombay, outside Sind and the limits of the town of Bombay—a Revenue Commissioner: in Sind—the Commissioner: in the Panjáb—the Financial Commissioner; and elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette,

appoint

appoint in this behalf by name or in virtue of his office.

8. Nothing herein contained shall be deemed to authorize the destruction of any document which, under the provisions of any law for the time being in force, is to be kept and maintained.

Saving of documents kept under provision of law.

9. The enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column.

Repeal of enactments.

THE SCHEDULE.

(See section 9).

Enactments repealed.

(a).—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject or short title.	Extent of repeal.
XX of 1875 ...	The Central Provinces Laws Act, 1875	In section eight, clause (c), the last twenty-one words.
XVIII of 1876 ...	The Oudh Laws Act, 1876.	In section thirty-nine, clause (c), the last eighteen words.

(b).—ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL.

Number and year.	Subject or short title.	Extent of repeal.
VI of 1865 ...	To authorize the destruction of Useless Records in certain Courts of the Bombay Presidency.	The whole.
V of 1869 ...	To authorize the destruction of Useless Records in the Courts of the Province of Sind.	The whole.

(c).—REGULATION UNDER 33 VIC., C. 3.

Number and year.	Subject or short title.	Extent of repeal.
III of 1877 ...	The Ajmer Laws Regulation, 1877.	In section forty, clause (c), the last twenty-one words.

THE INDIAN RAILWAY ACT, 1879.

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[*Price six annas and six pies.*]

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ACT No. IV OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 13th
March, 1879.)*

An Act to consolidate and amend the law relating
to Railways in India.

WHEREAS it is expedient to consolidate and Preamble
amend the law relating to Railways in India ;
It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY

1. This Act may be called “The Indian Railway Short title.
Act, 1879:”

It extends to the whole of British India and, so Local extent
far as regards subjects of Her Majesty the Empress
of India, to the dominions of Princes and States in
India in alliance with Her said Majesty ;

And it shall come into force on the first day of Commence-
July, 1879. ment.

2. On and from that day, the Acts specified in Repeal of
the first schedule hereto annexed shall be repealed. Acts.

All rules made, notifications published and powers
conferred under any of such Acts, or any enactment
thereby repealed, shall (so far as they are consistent
herewith) be deemed to have been respectively made,
published and conferred under this Act.

Nothing in the Carriers Act, 1865, shall apply to
carriers by railway.

3. In this Act, unless there be something repug- Interpreta-
nant in the subject or context,— tion-clause.

“ Railway ” means a Railway for the public con- “ Railway.”
veyance of passengers or goods :

It includes—

(a) all land within the fences or other boundary-marks prescribed under section fifty-two ;

(b) all lines of rail, sidings or branches worked over for the purposes of, or in connection with, a Railway ;

(c) all stations, offices, warehouses, fixed machinery and other works constructed for the purposes of, or in connection with, a Railway ;

(d) all vessels and rafts used for the purpose of carrying on the traffic of a Railway.

In section four, “ Railway ” includes a Railway under construction, and in the remaining part of this section and in the following sections (namely), six, eight, sixteen, twenty-five, thirty, thirty-three, thirty-four, forty to forty-six (both inclusive), fifty-two and fifty-three, “ Railway ” includes a Railway under construction and a Railway not used for the public conveyance of passengers or goods :

“ Railway-Administration.”

“ Railway-Administration ” means, in the case of a Railway worked by Government or a Native State, the Manager of such Railway, and in the case of a Railway worked by a Company or private individual, such Company or individual :

“ Railway-servant.”

“ Railway-servant ” means any person employed by a Railway-Administration, to perform any function in connection with a Railway,

and in section twenty-five, last clause, sections twenty-six, twenty-seven, thirty-eight and forty-two includes any person employed to perform any such function by any other person in execution of a contract into which he has entered with a Railway-Administration.

Right to use locomotives.

4. It shall be lawful, with the previous sanction of the Governor General in Council, to use on every Railway locomotive engines or other motive power, and carriages and wagons to be drawn or propelled thereby.

CHAPTER II.

DUTIES OF THE RAILWAY-ADMINISTRATION.

5. No Railway or portion or extension of, or addition to, a Railway shall be opened for the public conveyance of passengers until the Railway-Administration has given to the Governor General in Council notice in writing of the intention of opening the same, and until an officer appointed by the Governor General in Council to inspect such Railway, portion, extension or addition has, after inspection thereof, reported in writing to the Governor General in Council that in his opinion the opening of the same would not be attended with danger to the public using the same.

Railway
when to be
opened.

6. Every Railway-Administration shall, within forty-eight hours after the occurrence upon the Railway of—

accident, to
be reported

(a) any accident attended with loss of human life or serious injury to person or property,

(b) any accident of a description usually attended with such loss or injury, and

(c) any accident of any other description which the Governor General in Council may, from time to time, direct to be notified,

give notice thereof to the Local Government;

and the Station-master nearest to the place at which the accident occurs, or, where there is no Station-master, the officer in charge of the section of the Railway on which the accident occurs, shall, without unnecessary delay, give notice in writing or by telegraph of such accident to the nearest Magistrate and to the officer in charge of the Police-station in the jurisdiction of which the accident occurs, or to such other Magistrate and Police-officer as the Local Government from time to time appoints in this behalf.

7. Every Railway-Administration shall make up and deliver to the Governor General in Council a return of accidents occurring in the course of the public traffic upon the Railway, whether attended with personal injury or not, in such form and manner, and

return of

and at such intervals of time, as the Governor General in Council from time to time directs.

General rule for working Railway.

8. Every Railway-Administration shall make general rules for the following purposes (that is to say) :

(a) for regulating the mode in which, and the speed at which, carriages and wagons used on the Railway are to be moved or propelled ;

(b) for regulating the maximum number of passengers which each carriage and compartment may carry, and the mode in which such number shall be denoted thereon ;

(c) for regulating the provision to be made for the accommodation and convenience of passengers ;

(d) for declaring what shall be deemed to be, for the purposes of this Act, dangerous goods ; and

(e) generally for regulating the travelling upon, and the use, working and management of, the Railway ;

and may, from time to time, alter any such rules.

Penalty for breach of rules.

Any such rule may contain a provision that any person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to two months.

No such rule shall take effect unless it is consistent with this Act and until it has received the sanction of the Governor General in Council.

Notification of rules.

All rules made under this section shall be published in the *Gazette of India*, and shall be otherwise notified to the Railway-servants and the public in such manner as the Governor General in Council, from time to time, directs.

Power to cancel rules.

The Governor General in Council may at any time cancel any such rule.

Copy and translation of Act, &c., to be shown at stations.

9. An abstract of this Act, and a copy of the Time-tables and Tariff of charges which may, from time to time, be published for any Railway by any Railway-Administration, shall be exhibited in some conspicuous place at each station of such Railway, so that they may be easily seen and read.

All such documents shall be so exhibited in English and in the principal vernacular language of the district in which the station is situate, and in such other language, if any, as the Governor General in Council may direct.

CHAPTER III.

CARRIAGE OF PROPERTY.

10. Every agreement purporting to limit the obligation or responsibility imposed on a carrier by Railway by the Indian Contract Act, 1872, sections 151 and 161, in the case of loss, destruction or deterioration of, or damage to, property shall, in so far as it purports to limit such obligation or responsibility, be void unless—

Special contract limiting liability

(a) it is in writing signed by, or on behalf of, the person sending or delivering such property, and

(b) is otherwise in a form approved by the Governor General in Council.

11. When any property mentioned in the second schedule hereto annexed is contained in any parcel or package delivered to a carrier by Railway, the carrier shall not be liable for loss, destruction or deterioration of, or damage to, such property, unless at the time of delivery the value and nature thereof have been declared by the person sending or delivering the same, and an increased charge for the safe conveyance of the same, or an engagement to pay such charge, has been accepted by some Railway-servant specially authorized in this behalf.

No liability for loss of gold, silver, &c., unless declared and accepted.

When any property of which the value and nature have been declared under this section has been lost, destroyed or damaged, or has deteriorated, the compensation recoverable for such loss, destruction, damage or deterioration shall not exceed the value so declared.

12. A carrier by Railway shall in no case be answerable for loss, destruction or deterioration of, or damage to, any passenger's luggage, unless a Railway-servant has booked and given a receipt for the same.

No liability for unbooked luggage.

13. *Ir*

Plaintiffs not required to prove negligence.

13. In any suit against a carrier by Railway for compensation for loss, destruction or deterioration of, or damage to, property delivered to a Railway-servant, it shall not be necessary for the plaintiff to prove in what manner such loss, destruction, deterioration or damage was caused.

Lien for money due for carriage, &c., of property.

14. If any person fails to pay on demand any sum due by him to a carrier by Railway for conveyance of any property by Railway, or for the custody of any property, or for demurrage or wharfage in respect of the same, the Railway-Administration may detain the whole or any part of such property, or, if the same have been removed from the Railway, any other property of such person then on such Railway or thereafter coming into the possession of the Railway-Administration ;

and may also sell by public auction, in the case of perishable property at once, and in the case of other property on the expiration of at least fifteen days' notice thereof published in one or more of the local newspapers or, where there are no such newspapers, in such manner as the Local Government may, from time to time, direct, sufficient of such property to produce the sum payable as aforesaid, and all charges and expenses of such detention, notice and sale, or, if such person fails to remove from the Railway within a reasonable time any property so detained, the whole of such property ;

and may, out of the proceeds of the sale, retain the sum so payable, together with all charges and expenses aforesaid, rendering the surplus, if any, of such proceeds, and so much of the property (if any) as remains unsold, to the person entitled thereto ;

or such carrier may recover any such sum by suit.

Written account of property to be given on demand

15. The owner or person having the care of any property which has been carried upon any Railway, or is brought into any station or warehouse for the purpose of being carried upon a Railway, shall, on demand by any Railway-servant appointed in this behalf by the Railway-Administration, deliver to him an exact account in writing signed by such owner or

person

person of the quantity and description of such property.

16. No passenger shall take with him on a Railway, and no person shall deliver or tender for carriage upon any Railway, any dangerous luggage or goods without giving notice of their nature to a Railway-servant, or, in the case of luggage or goods delivered or tendered for carriage, distinctly marking their nature on the outside of the package containing the same. Dangerous goods

Any Railway-servant may refuse to carry upon a Railway any luggage or parcel which he suspects to contain dangerous goods, and may require such luggage or parcel to be opened to ascertain the fact previously to carrying the same ;

and in case any such luggage or parcel is received for the purpose of being carried upon a Railway, any Railway-servant may stop the transit thereof until he is satisfied as to the nature of its contents.

CHAPTER IV.

CARRIAGE OF PASSENGERS.

17. Every person desirous of travelling on a Railway shall, upon payment of his fare, be furnished with a ticket specifying in English and the principal vernacular language of the district in which the ticket is issued, the class of carriage for which, and the place from and place to which, the fare has been paid, and the amount of such fare ; Passengers on payment of fares to be furnished with tickets.

and every passenger shall, when required, show his ticket to any Railway-servant duly authorized to examine the same, and shall deliver up such ticket upon demand to any Railway-servant duly authorized to collect tickets. Tickets to be shown and given up demand.

18. At the intermediate stations, the fares shall be deemed to be accepted and the tickets furnished only upon condition that there be room in the train for which the tickets are furnished. Fare and tickets at intermediate stations.

In case there is not room for all the passengers to whom tickets have been furnished, those who have obtained Preferential right of ticket-holders.

obtained tickets for the longest distance shall have the preference; and those who have obtained tickets for the same distance shall have the preference according to the order in which they have received their tickets :

Provis Provided that all officers and troops of Her Majesty on duty, and all other persons on the business of the Government, who, by virtue of any contract with the Government or, in the case of a Railway worked by Government, of any direction of the Governor General in Council, are entitled to be conveyed on a Railway in preference to, or in priority over, the public, shall be entitled to such preference and priority without reference to the distance for which, or the order in which, they have received their tickets.

Any passenger to whom a ticket has been furnished at any station and for whom there is no room shall, on returning the ticket within a reasonable time after its issue, be entitled to have his fare at once refunded.

Fares to be prepaid. **19.** Except with the permission of the Railway-Administration or of such officer as it appoints in this behalf, no person shall enter any carriage used on any Railway for the purpose of travelling therein without having first paid his fare and obtained a ticket.

Power to remove persons suffering from infectious disease **20.** Any passenger found suffering from an infectious disease in a Railway-carriage or in any place on a Railway may, if his remaining in such carriage or place is likely to spread the infection of such disease, be removed from such carriage or place by any Railway-servant ;

any passenger so removed who has paid his proper fare to or at the place at which he is so removed, shall be entitled, on returning his ticket, to have such fare refunded.

CILAPTER V.

OFFENCES AND PROCEDURE.

(1).—*Offences by the Railway-Administration.*

Penalty for opening railway in con- **21.** Any Railway-Administration opening, in contravention of section five, any Railway, or any portion

OR

or extension of, or addition to, a Railway, shall forfeit to Government the sum of one thousand rupees for every day during which the same continues open in contravention of that section. travention of section 5.

22. Any Railway-Administration omitting to give notice as required by section six, shall forfeit to Government the sum of one hundred rupees for every day during which such omission continues. For omitting to report accident.

23. Any Railway-Administration failing to deliver any return mentioned in section seven within fourteen days after the same ought to be delivered, or to make or notify any rules as required by section eight, or to exhibit any abstract or copy mentioned in section nine in manner required by that section, shall forfeit to Government the sum of fifty rupees for every day during which such failure continues. For not serving return accidents or making rule under section 8, or exhibiting copy under section 9.

(B).—Offences by Railway-servants.

24. Any Station-master or other person omitting to give notice as required by section six, shall be punished with fine which may extend to fifty rupees. For omitting to give notice of accident.

25. Any Railway-servant who is in a state of intoxication whilst actually employed upon a Railway in the discharge of any duty, For drunkenness or breach of duty.

or who negligently omits to perform his duty, ~~or who performs the same in an improper manner,~~ shall be punished with fine which may extend to fifty rupees;

or if the duty in any of the cases aforesaid be such that the negligent omission or improper performance thereof would be likely to endanger the safety of any person travelling or being upon such Railway, such servant shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

26. If any Railway-servant in the discharge of his duty endangers the safety of any person— For endangering the safety of persons.

(a) by disobeying any general rule sanctioned and published and notified in the manner prescribed by section eight; or

(b) by

(b) by disobeying any rule or order not inconsistent with the general rules aforesaid, and which such servant was bound by the terms of his employment to obey, and of which he had notice ; or

(c) by any rash or negligent act or omission,

he shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five hundred rupees, or with both.

For receiving
bribes.

27. Every Railway-servant shall be deemed a “public servant” within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code.

Amendment
of Penal
Code, section
161.

In the definition of legal remuneration contained in the said section 161, the word “Government” shall, for the purposes of this section, be deemed to include any employer of a Railway-servant as such.

For compel-
ling passen-
gers to enter
carriages
already full.

28. Any Railway-servant who compels or attempts to compel any passenger to enter a carriage or compartment containing the maximum number of passengers denoted thereon in accordance with a rule made and notified under section eight, shall be punished with fine which may extend to one hundred rupees.

(C).—*Offences by Persons generally.*

For not giv-
ing account
of goods or
giving false
account.

29. Any person required under section fifteen to give an account of the quantity and description of any property who neglects or refuses to give such account,

or who wilfully gives a false account,

shall be punished with fine which may extend to five rupees for every maund (of 3,200 tolas) of such property ; and such fine shall be in addition to any charge to which such property may be liable.

For taking
dangerous
goods on
Railway or
delivering
such goods
without
notice.

30. Whoever, in contravention of section sixteen, takes with him any dangerous goods on a Railway, or delivers or tenders any such goods for the purpose of being carried upon a Railway, shall be punished with fine which may extend to two hundred rupees.

For travel-
ling without
ticket or not

31. Any passenger travelling on a Railway without a proper ticket or having such a ticket and **not** showing

showing or delivering up the same when so required under section seventeen, shall be liable to pay the fare of the class in which he is found travelling, from the place whence the train originally started, unless he can prove that he has travelled a less distance only, in which case he shall be liable to pay the fare of the class aforesaid only from the place whence he has travelled.

Every such fare shall, on application by a Railway-servant to a Magistrate, and on proof of the passenger's liability, be recoverable from such passenger as if it were a fine, and shall, when recovered, be paid to the Railway-Administration.

32. Any person who defrauds, or attempts to defraud, any carrier by Railway—

For evading payment of fare.

(a) by travelling, or attempting to travel, on any Railway without having previously paid his fare;

(b) by riding or attempting to ride in or on a carriage, or by a train, of a higher class than that for which he has paid his fare;

(c) by using or attempting to use a ticket on any day for which such ticket is not available;

(d) by continuing his journey in or upon any carriage beyond the place to which he has paid his fare, without previously paying the fare for the additional distance;

or who, in any other manner whatever, attempts to evade the payment of his fare,

or who wilfully alters or defaces his ticket so as to render the date, number or other material portion thereof illegible,

For altering ticket.

shall be punished with fine which may extend to fifty rupees, and shall also be liable to pay the fare (if any) which he ought to have paid; and such fare shall be recoverable in manner provided by section thirty-one and shall, when recovered, be paid to the Railway-Administration.

33. Any passenger who gets into or upon, or attempts to get into or upon, or quits, or attempts to quit, any carriage upon any Railway, while such

For entering carriage in motion.

carriage

carriage is in motion, shall be punished with fine which may extend to twenty rupees ;

For riding
on the steps

and any passenger who rides, or attempts to ride, on the steps, or any other part of a carriage, upon any Railway, except on those parts which are intended for the accommodation of passengers,

shall be punished with fine which may extend to fifty rupees.

For riding
on engine,
tender, &c.

34. Any person who, without the permission of the Railway-Administration, rides or attempts to ride upon any locomotive-engine or tender upon any Railway; or in or upon any vehicle not appropriated to the carriage of passengers,

shall be punished with fine which may extend to one hundred rupees.

For

35. Any person who, without the consent of his fellow-passengers, if any, in the same compartment, smokes in or upon any Railway-carriage, except in a carriage or compartment specially provided for the purpose, shall be punished with fine which may extend to twenty rupees ;

and any person who persists in so smoking (except as aforesaid) after being warned by any Railway-servant to desist may, in addition to incurring the liability above mentioned, be removed by any Railway-servant from any such carriage, and from the premises of the Railway, and, where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

For intoxica-
tion or nui-
sance.

36. Any person who is in a state of intoxication, or who commits any nuisance or act of indecency in any Railway-carriage, or upon any part of any Railway ;

or who wilfully and without lawful excuse interferes with the comfort of any passenger, or extinguishes any lamp in any Railway-carriage,

shall be punished with fine which may extend to fifty rupees ; and may be removed by any Railway-servant from any such carriage, and also from the premises of the Railway, and, where he has paid his

fare

fare and obtained a ticket, shall forfeit such fare and ticket.

37. If any carriage, compartment, room or place be reserved by the Railway-Administration for the exclusive use of females, any male person who without lawful excuse enters such carriage, compartment, room or place knowing the same to be reserved as aforesaid, or remains therein after having been informed of its having been so reserved, shall be punished with fine which may extend to one hundred rupees,

For entering carriage or room reserved for females.

and may be removed therefrom, and also from the premises of the Railway, by any Railway-servant,

and, where he has paid his fare and obtained a ticket, shall forfeit such fare and ticket.

38. Whoever wilfully obstructs or impedes any Railway-servant in the discharge of his duty, shall be punished with fine which may extend to one hundred rupees.

For obstructing Railway-servant in his duty.

39. Any passenger wilfully entering a carriage or compartment containing the maximum number of passengers which has been denoted thereon in accordance with a rule made and notified under section eight, shall be punished with fine which may extend to one hundred rupees.

For entering carriage already full.

40. Any person who without authority or reasonable excuse makes, alters, shows, hides, removes or extinguishes any signal or light upon any Railway, or upon any engine, carriage, wagon or other vehicle upon a Railway,

For removing signals or injuring carriage, &c.

or who negligently damages any engine, carriage, wagon or other vehicle belonging to a Railway, or any warehouse, building, machine, fence or other thing so belonging,

or who needlessly interferes with the means of communication provided in any train between the guard and the engine-driver or passengers,

shall be punished with fine which may extend to one hundred rupees.

41. Any

For trespass.

41. Any person who unlawfully enters upon a Railway shall be punished with fine which may extend to twenty rupees; and if any person so entering refuses to leave such Railway on being requested to do so by any Railway-servant, or by any other person on behalf of the Railway-Administration, he shall be punished with fine which may extend to fifty rupees, and may be immediately removed from such Railway by such servant or other person as aforesaid.

For cattle-trespass with-
in Railway-
fences.

42. The owner or person in charge of any bulls, cows, bullocks, calves, elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids straying on any Railway provided with fences suitable for the exclusion of such animals, shall be punished with fine which may extend to ten rupees for each animal, in addition to any amount that may be recovered under the Cattle-Trespass Act, 1871.

For wil-
fully driving
cattle on
fenced Rail-
way,

Whenever any such animals are wilfully and unlawfully driven, or knowingly and unlawfully permitted to be, on any Railway provided with fences suitable for the exclusion of such animals,

on unfenced
Railway.

and whenever any such animals are wilfully driven, or knowingly permitted to be, on any Railway not so provided, otherwise than for the purpose of lawfully crossing the Railway, or for any other lawful purpose,

the person in charge of such animals, or if he cannot be identified, then the owner of the said animals, shall be punished with fine which may extend to fifty rupees for each animal, in addition to any amount that may be recovered under the same Act.

Recovery of
fines and
payment of
compensa-
tion.

All fines imposed under this section may, if the convicting Magistrate so direct, be recovered in manner provided by section twenty-five of the said Cattle-Trespass Act, 1871, and may be appropriated in whole or in part in compensation for loss or damage proved to his satisfaction.

Amendmen
of Act I of
1871, ss. 1
and 26.

The expression "public road" in sections eleven and twenty-six of the same Act shall be deemed to include a Railway. And any Railway-servant may

exercise

exercise the powers of seizure provided by the said section eleven.

43. Whoever knowing or having reason to believe that any engine or train is approaching along a Railway opens any gate which the Railway-Administration has set up on either side of the Railway across any road for the use or accommodation of any person, or passes or attempts to pass, or drives or takes, or attempts to drive or take, any vehicle, animal or other thing, across the Railway ;

For opening or not properly shutting gates.

and whoever at any time, in the absence of a gate-keeper, omits to shut and fasten such gate as soon as he and any vehicle, animal or other thing under his charge have passed through the same,

shall be punished with fine which may extend to fifty rupees.

44. Whenever any minor under twelve years of age unlawfully—

For minors obstructing line or throwing stones at train

(a) places or throws, or attempts to place or throw, upon or across a Railway any wood, stone or other thing, or

(b) removes or displaces, or attempts to remove or displace, any rail, sleeper, spike, key or other thing belonging to the permanent-way of a Railway, or

(c) throws or causes to fall, or attempts to throw or cause to fall, against, into or upon any engine, tender, carriage or other vehicle used upon a Railway, any wood, stone or other thing,

such minor shall be deemed guilty of an offence, and the convicting Magistrate may, in his discretion, direct either that the minor, if a male, shall be punished with whipping, or that the father or guardian of the minor shall, within such reasonable time as the Magistrate may fix, execute a bond binding himself, in such penalty as the Magistrate may direct, to prevent the minor from repeating such offence.

The amount of such bond, if forfeited, shall be recoverable as if it were a fine.

Any person neglecting or refusing to execute a bond when required under this section so to do shall

be

be punished with fine which may extend to fifty rupees.

For wilful act or omission endangering persons on Railway.

45. Whoever wilfully does any act, or wilfully omits to do what he is legally bound to do, intending by such act or omission to endanger, or knowing that he is thereby likely to endanger, the safety of any person travelling or being upon any Railway, shall be punished with transportation (or, in the case of an European or American, penal servitude) for a term of not less than seven years, or with imprisonment for a term which may extend to ten years.

For rash or negligent act.

46. Whoever rashly or negligently does any act, or omits to do what he is legally bound to do, and such act or omission is likely to endanger the safety of any person travelling or being upon a Railway, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Disobedience of omnibus, &c., drivers to Railway-servants.

47. Every driver or conductor of an omnibus, carriage or other vehicle shall, while in or upon any station-yard or other premises forming part of a Railway, obey the reasonable directions of any Railway-servant duly authorized in this behalf; and every person offending against this section shall be punished with fine which may extend to twenty rupees.

(D).—Arrest of Offenders.

Arrest for offences punishable under this Act of offender whose name is unknown, &c.

48. If any person commits any offence punishable under this Act and there is reason to believe that he will abscond, or his name and address are unknown and he refuses to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any Railway-servant or Police-officer, or any other person whom such Railway-servant or Police-officer may call to his aid, may, without any warrant or written authority, arrest and detain such offender until he can be taken before a Magistrate or give sufficient security for his appearance before such Magistrate, or is otherwise discharged by due course of law.

Arrest for offences against certain sections.

49. Every person committing any offence mentioned in sections eight, twenty-five, twenty-six, thirty-six, thirty-seven, thirty-eight, forty-four, forty-five and

forty-six

forty-six may be arrested without any warrant or written authority by any Railway servant or Police-officer, or by any other person whom such servant or officer may call to his aid;

and every person so arrested shall, without unnecessary delay, be taken before a Magistrate authorized to punish him or to commit him for trial.

(E).—*Jurisdiction.*

50. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Magistrates having jurisdiction.

Any person committing any offence against this Act or the rules made under it, shall be triable for such offence in any place in which he may be found or which the Local Government may, from time to time, notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force.

Place of trial.

Every notification under this section shall be published in the local official Gazette and a copy thereof shall also be exhibited in some conspicuous place at each of such Railway-stations as the Local Government may direct, so that it may be easily seen and read.

(F).—*Saving of other Criminal Laws.*

51. Nothing in this Act shall be deemed to prevent any person from being arrested, prosecuted or punished under any other law for any act or omission which constitutes an offence against this Act or the rules made under it:

Saving of prosecutions under other laws.

Provided that no person shall be punished twice for the same offence.

CHAPTER VI.

MISCELLANEOUS.

52. The Governor General in Council, or the Local Government with the previous sanction of the Governor

Power of Government to make rules

as to fences,
gates and
bars.

Governor General in Council, may, from time to time, make rules requiring—

(a) that boundary-marks or fences be provided for any Railway or any part thereof, and for roads constructed in connection therewith;

(b) that gates or bars be erected at places where any Railway crosses a road on the level; and

(c) that persons be employed to open and shut such gates or bars;

and may by such rules determine what kind of fences shall, for the purposes of section forty-two, be deemed to be suitable for the exclusion of cattle,

and direct that any Railway-Administration wilfully neglecting or violating any rule made under this section, shall forfeit to Government a sum not exceeding five hundred rupees for every such neglect or violation, or, when such neglect or violation is continuous, for every day during which it continues.

Power to
declare Local
Government
in respect of
any Railway.

53. The Governor General in Council may from time to time, by notification in the *Gazette of India*, declare what Government or other Authority shall be deemed to be, for the purposes of this Act, the Local Government in respect of the whole or any part of a Railway.

Power to
extend Act
to steam-
tramways.

54. The Governor General in Council may, by notification, extend this Act or any portion thereof to any tramway worked by steam.

THE FIRST SCHEDULE.

ACTS REPEALED.

(See section 2.)

Number and year.	Title.
XVIII of 1854 ...	An Act relating to Railways in India.
XXXI of 1867 ...	An Act to render penal certain offences committed by servants of Railway Companies.
XIII of 1870 ...	An Act to apply the provisions of Act No. XVIII of 1854 to Railways belonging to, or worked by, Government.
XXV of 1871 ...	An Act to amend the Railway Act.

THE SECOND SCHEDULE.

(See section 11.)

(a) Gold or silver, coined or uncoined, manufactured or unmanufactured ;

(b) plated articles ;

(c) cloths and tissue and lace of which gold or silver forms part ;

(d) precious stones, jewellery, trinkets ;

(e) watches, clocks or time-pieces of any description ;

(f) Government securities ;

(g) Government stamps ;

(h) bills of exchange, hundis, promissory notes, bank-notes, orders or other securities for payment of money ;

(i) maps, writings, title-deeds ;

(j) paintings, engravings, lithographs, photographs, carvings, sculpture and other works of art ;

(k) glass, china, marble ;

(l) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials ;

(m) shawls ;

(n) lace ;

(o) opium ;

(p) ivory, ebony, sandalwood, sandalwood-oil ;

(q) musical and scientific instruments.

ACT No. V OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 22nd March 1879).

An Act to amend the Presidency Banks Act, 1876.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876, in manner hereinafter appearing; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The Presidency Banks Act, 1879;" and it shall come into force on the first day of May, 1879.

Short title.
Commence-
ment.

2. To the first clause of section 28 of the Presidency Banks Act, 1876, the following proviso shall be added, that is to say:

Amendment
of Act XI of
1876, section
28.

"Provided that no person shall be chosen to be President or Vice-President twice in succession."

3. In the same Act, section 34, before the words "no Khazánchi," the words "without the previous sanction of the Board" shall be inserted.

Amendment
of section 34
of same Act

4. In the same Act, section 36, clause (a), sub-clause (4), after the words "municipal body," the words "or any body of Commissioners for making improvements in any port or of trustees of any port" shall be inserted.

Amendment
of section 36.

In the same section, the words "in the case of the Bank of Madras" shall be omitted in both the places in which they occur.

In the same section, after clause (m), the following clause shall be inserted, that is to say, "(m m) the borrowing of money in India for the purposes of the Bank's business, and the giving of security for money so borrowed by pledging assets or otherwise."

5. In

[Print one anna and three pies.]

Presidency Banks. [ACT V, 1879.]

Amendment
of section 37.

5. In section 37 of the same Act, for clause (d), the following shall be substituted, that is to say,

“(d) Nor shall they (except upon the security mentioned in section thirty-six, paragraph a, Nos. 1 to 5 inclusive)

“discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

“lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed.”

Amendment
of section 63.

6. In section 63 of the same Act, clause (a), for the words “lent by discount of bills or otherwise to,” the words “lent to or for which bills may be discounted for” shall be substituted.

ACT No. VI OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 22nd March, 1879).

An Act for the preservation of wild elephants.

WHEREAS it is expedient to provide for the preservation of wild elephants; It is hereby enacted as follows:— Preamble

1. This Act may be called "The Elephants Preservation Act, 1879." Short title

It extends to the territories now respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, British Burma and Coorg; Local extent

and the Local Government may, with the previous sanction of the Governor General in Council, extend it to any other local area by notification in the local official Gazette.

So far as regards the power to make declarations and rules, it shall come into force on the passing thereof. In other respects it shall come into force on the first day of April, 1879. Commencement.

2. The words "kills or catches elephants," in section 25, clause (i), of the Indian Forest Act, 1878, and the words "killing or catching elephants," in section 31, clause (j), of the same Act, shall be repealed in every local area to which this Act extends or is extended. Repeal.

3. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant Killing and capture of wild elephants prohibited.

(a) in defence of himself or some other person;

(b) when

[The words "and the person"]

(b) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal; or

(c) as permitted by a license granted under this Act.

Rights of Government with respect to certain elephants and tusks.

4. Every elephant captured, and the tusks of every elephant killed, in any of the cases mentioned in section three, clauses (a) and (b), by any person not licensed under this Act, shall be the property of Government.

License to kill and capture wild elephants.

5. The Collector or Deputy Commissioner of any district may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district :

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof.

Power of Local Government

6. The Local Government may from time to time, subject to the control of the Governor General in Council,

to declare what are main roads and canals, and to make rules as to licenses.

declare what shall be deemed to be main public roads and canals within the meaning of this Act, and

make rules consistent with this Act for regulating

(a) the grant and renewal of licenses under this Act,

(b) the fees (if any) in money, tusks or captured elephants to be charged on such grant and renewal,

(c) the time during which such licenses shall continue in force, and

(d) the conditions (if any) on which they shall be granted.

All such declarations and rules shall be published in the local official Gazette and shall thereupon have the force of law.

Penalty for contravening section 3

7. Whoever, in contravention of section three, kills, injures or captures, or attempts to kill, injure or capture,

capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned;

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees.

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both.

When any person holding a license under this Act is convicted under this section, such license shall become void and shall be delivered up to the convicting Magistrate.

8. Any officer of Revenue or Police, or any forest-officer, who may find any person killing, injuring or capturing, or attempting to kill, injure or capture, any wild elephant, except in the cases mentioned in section three, clauses (a) and (b), may require him to produce and shew a license granted to him under this Act.

License to be produced and shewn on requisition of certain officers.

Any person who, on such request, wilfully refuses or is unable to produce and shew such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted.

Limitation of prosecution.

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue.

Recovery of fees.

ACT No. VII OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General, on the 9th May 1879).

An Act to provide for the temporary appointment in the Panjáb of an Additional Financial Commissioner.

WHEREAS it is expedient to provide temporarily for the appointment of an Additional Financial Commissioner to assist the Financial Commissioner of the Panjáb; It is hereby enacted as follows:—

1. This Act may be called "The Panjáb Additional Financial Commissioner's Act, 1879:"

And it shall come into force at once.

2. The Lieutenant-Governor of the Panjáb may, from time to time, with the previous sanction of the Governor General in Council, appoint such person as the said Lieutenant-Governor thinks fit to be an Additional Financial Commissioner.

Every person so appointed shall hold his office during the pleasure of the Governor General in Council:

Provided that no such person shall be so appointed or continue in office after the thirtieth day of September, 1879.

3. Every Additional Financial Commissioner, appointed under section 2, shall hold his sittings at such place in the Panjáb as the said Lieutenant-Governor from time to time directs, and shall dispose of such revenue, judicial and other business, now or hereafter existing before the Financial Commissioner of the Panjáb, under any enactment for the time being in force, as the said Financial Commissioner may, from time

Panjab Additional Financial Commr. [Act VII, 1879.]

time to time, transfer to him⁸ for that purpose, and, in the disposal of such business, shall follow the same procedure and exercise the same powers as would be followed and exercised by the said Financial Commissioner in like cases.

Power to
withdraw
cases so trans-
ferred.

The said Financial Commissioner may at any time withdraw and himself dispose of any business transferred to the Additional Financial Commissioner under this section and not disposed of by him.

ACT No. VIII of 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 23rd May, 1879)

An Act to amend the North-Western Provinces Land-Revenue Act, 1873, and the North-Western Provinces Local Rates Act, 1878.

WHEREAS it is expedient to amend the North-Western Provinces Land-Revenue Act, 1873; Preamble
It is hereby enacted as follows :—

1. This Act may be called “The North-Western Provinces Land-Revenue Act, 1879;” Short title

and shall come into force at once.

This section and sections 28 and 29 extend to the whole of the territories for the time being under the administration of the Lieutenant-Governor of the North-Western Provinces. Commencement.
Local extn

The whole of this Act extends to those portions of the said territories to which the whole of the said North-Western Provinces Land-Revenue Act, 1873, extends; and every provision of this Act amending any part of the said North-Western Provinces Land-Revenue Act, 1873, extends to all other portions of the said territories to which such part may have been, whether before or after the passing of this Act, extended.

2. To section 3, clause (1), of the said North-Western Provinces Land-Revenue Act, 1873, the following shall be added :— Addition to section 3, clause 1, of Act XIX of 1873.

and (e), for such purposes as the Local Government may from time to time determine, any grant of land made heretofore or hereafter under the waste-land rules for the time being in force.”

Amendment
of same Act,
section 23.
New section
substituted
for section 29
of same Act.
Patwáris'
fund.

3. In section 23 of the same Act, for the word "villages," the word "maháls" shall be substituted.

4. For section 29 of the same Act, the following shall be substituted :—

"29. A rate may be imposed by order of the Board on the annual value or on the cultivated area of all maháls, or partly on one and partly on the other, for the purpose of defraying the salaries of patwáris and any charges incurred for the proper supervision, maintenance and correction of patwáris' records.

"The proceeds of such rate shall be credited to a provincial fund, and shall be applied to the said purpose in such manner as the Board, subject to the orders of the Local Government, may from time to time direct.

"The Local Government may from time to time, by rules published in the local official Gazette, declare the circumstances under which a landlord shall be entitled to recover from tenants holding rent-free, or at fixed or beneficial rates, the whole or any specified part of the rate imposed under this section.

"*Explanation.*—Charges incurred in the preparation of village-maps shall be deemed to be charges within the meaning of this section."

New proviso
substituted
for proviso to
section 30 of
same Act.

5. For the proviso to section 30 of the same Act, the following shall be substituted :—

"Such rate shall not exceed three per cent. on the annual value of the rated mahál; and the amount to be imposed on each mahál shall be fixed, in temporarily settled districts for the term of settlement, and in permanently settled districts for thirty years, or such shorter period as the Local Government may from time to time direct :

"Provided that the rate or sum hitherto paid (whatever its amount may be) by the proprietors of any mahál on account of the patwáris' salaries or expenses shall, if the Local Government so directs, be deemed to be the rate imposed under this Act."

Amendment
of section 44
of same Act.

6. In section 44 of the same Act, for the word "elected," the word "selected" shall be substituted ;
and

and to the same section the words "such representatives shall be called lambardárs" shall be added.

7. In section 65 of the same Act, for clauses (d) and (e), the following shall be substituted :—

Amendment
of section 65
of same Act.

"(d) as to any other matters which he may be directed to record under rules framed under section 257.

"The Settlement-officer may, subject to rules to be made from time to time by the Board, with the previous sanction of the Local Government, fix and shall record—

"(e) the amounts of instalments of rent and the respective dates for their payment ;

"(f) the dates for the payment of any amounts payable by inferior to superior proprietors under section 51, clause (1) ; and

"(g) the dates on which profits shall be divisible by lambardárs."

8. In section 66 of the same Act, for the second clause, the following shall be substituted :—

Amendment
of section 66
of same Act.

"A list of all other cesses levied in accordance with village-custom, and generally or specially sanctioned by the Local Government, shall be made by the Settlement-officer. And, save as provided by any other enactment for the time being in force, no cesses not comprised in such list shall be enforced in any Civil or Revenue Court, and no such list shall be altered or added to during the currency of a settlement."

List of cesses
to be made.

And to the same section, the following shall be added :—

"While any local area is under settlement, the Governor General in Council may, from time to time, in case of doubt, declare what shall be deemed to be a cess within the meaning of this section."

Power of
Governor
General in
Council to
declare what
shall be
deemed to be
a cess.

9. To section 74 of the same Act, the following shall be added :—

Addition to
section 74 of
same Act.

"Provided that the Local Government may empower any Settlement-officer, when any such application

cation made before him is opposed, to refuse, for reasons to be recorded by him in writing, to grant the same."

Amendment
of section
95 of same
Act

10. In section 95 of the same Act, for the words "no such changes," the words "no such change or other thing affecting proprietary rights or interests" shall be substituted.

Addition to
section 141
of same Act

11 To section 141 of the same Act, the following shall be added —

"*Explanation* — 'Owners' in this and the following sections of this chapter include also a lessee, mortgagee or other person in possession of the land referred to "

Addition to
section 146
of same Act

12 To section 146 of the same Act, the following shall be added :—

"*Explanation* — 'Proprietor' in this chapter includes also a farmer and a mortgagee in possession."

Amendment
of section
156 of same
Act.

13 In section 156 of the same Act, for the word "proprietor," the words "defaulter or his legal representative" shall be substituted

New section
substituted
for section
157 of same
Act.
Transfer of
defaulter's
share to
co-sharers

14 For section 157 of the same Act, the following shall be substituted —

"157. When the arrear is due in respect of a share or pattí of a mahál, the Collector of the district may, with the previous sanction of the Commissioner of the Division, in cases where the annual revenue payable in respect of such share or pattí does not exceed fifty rupees, and in other cases with the previous sanction of the Board, transfer such share or pattí, for a term not exceeding fifteen years from the first day of July next after the date of the sanction, to any or all of the other co-sharers, on condition of their paying such arrear and on such terms as the Commissioner or Board (as the case may be) in each case may think fit

"The Commissioner shall, without unnecessary delay, report to the Board every transfer sanctioned by him under this section, and the Board may thereupon set aside such transfer or alter the terms of the same, or pass such other order as it thinks fit.

"A transfer

"A transfer under this section shall not affect the joint and several liability of the co-sharers of the mahál in which it is enforced."

15. To section 165 of the same Act, the following shall be added :—

Addition to
section 165
of same Act.

"for the remainder of the term of the settlement of the district, or for any period within such term as the Board may fix."

16. To section 172 of the same Act, the following shall be added :—

Addition to
section 172
of same Act.

"No officer having any duty to perform in connection with any such sale, and no person employed by or subordinate to such officer, shall, either directly or indirectly, bid for, acquire or attempt to acquire, except on behalf of the Government or the Court of Wards, the property sold or any interest therein."

17. To section 189 of the same Act, the following shall be added :—

Addition to
section 189
of same Act

"No protest under this section shall be of any effect unless it is made at the time of payment in writing and signed by the person making the same, or by an agent duly authorized in his behalf."

18. In section 193 of the same Act, for the word "lands," the word "property" shall be substituted.

Amendment
of section
193 of same
Act.

19. In section 194 of the same Act, for the word "lands," the word "property," and for clause (e) the following, shall be substituted :—

Amendment
of section
194 of same
Act.

"(e) persons declared by the Local Government incapable, owing to physical defects and infirmities, to manage their own estates."

20. In section 195 of the same Act, for the proviso, the following shall be substituted :—

New proviso
substituted
for proviso
in section
195 of same
Act.

"Provided that, if the person or property of any disqualified proprietor mentioned in section 194, clause (b), clause (c) or clause (d), has been placed under the charge of the Collector, or under the superintendence of the Court of Wards, by any Civil Court, it shall not be released without the concurrence of such Court :

"Provided

“ Provided also that the property of a proprietor who has been held disqualified under the same section, clause (a), clause (e), clause (f) or clause (g), shall not be released from the superintendence of the Court of Wards without the previous sanction of the Local Government ”

Amendment
of section
200 of same
Act

21. In section 200 of the same Act, after the word “ may,” the following shall be inserted :—

“ from time to time determine what sums shall be allowed in respect of the expenses of any person whose property is under its superintendence, and.”

Amendment
of section
203 of same
Act

22. In section 203 of the same Act, before the words “ any part,” the words “ the whole or ” shall be inserted

New section
substituted
for section
205 of same
Act

23. For section 205 of the same Act, the following shall be substituted .—

Suits by and
against
disqualified
proprietors in
Civil Courts.

“ 205. All disqualified proprietors whose property is in charge of the Court of Wards, and for whom guardians have been appointed, shall sue and be sued in Civil Courts by and in the name of their guardians :

“ Provided that no such suit shall be instituted, defended, compromised or otherwise dealt with by any such guardian without the previous sanction of the Court of Wards.

“ Disqualified proprietors, whose property is in charge of the Court of Wards, and for whom guardians have not been appointed, shall sue and be sued in Civil Courts by and in the name of the Collector of the district in which the suit is brought.”

New sections
to follow
section 205
of same Act
Suits and
proceedings
in Revenue
Courts

24. After section 205 of the same Act, the following sections shall be inserted :—

“ 205A A Manager appointed by the Court of Wards may, subject to the control of the Collector, institute, defend, compromise or otherwise deal with suits, applications or other proceedings in Revenue Courts relating to the property entrusted to him.

Disability of
disqualified
proprietors.

“ 205B. Persons whose property is under the superintendence of the Court of Wards shall not be
competent

competent to create, without the sanction of the Court, any charge upon, or interest in, such property or any part thereof.

"And no such property shall be liable to be taken in execution of a decree made in respect of any contract entered into by any such person while his property is under such superintendence."

25. In section 212 of the same Act, after the word "suit," the words "or other proceeding" shall be inserted. Amendment of section 212 of same Act.

26. In section 235, clause (20), of the same Act, for the word "rent" where it first occurs, the word "limits" shall be substituted. Amendment of section 235 of same Act.

27. In section 257 of the same Act, after clause (e), the following clause shall be inserted :— Addition to section 257 of same Act.

"(ee) regulating the appointment, dismissal and duties of *lambardárs*."

AND whereas it is also expedient to amend the North-Western Provinces Local Rates Act, 1878; It is hereby further enacted as follows ;—

28. In section 3 of the said North-Western Provinces Local Rates Act, for the definition of "tenant," the following shall be substituted :— Definition of "tenant" in section 3 of Act III of 1878.

"'Tenant' used in reference to any land, means a tenant holding directly from the landlord of such land and also includes an under-proprietor of such land, and a person bound to pay or deliver anything to such landlord in respect of the use and occupation of such land."

29. In section 16 of the same Act, shall be substituted— Amendment of section 16 of same Act.

(a) for the words and figures "twenty-three of Act No. X of 1859, and in section one of Act No. XIV of 1863," the words and figures "ninety-three of the North-Western Provinces Rent Act, 1873;" and

(b) for the words and figures "Act No. X of 1859 and Act No. XIV of 1863," the words and figures "the North-Western Provinces Rent Act, 1873."

ACT No. IX OF 1879,

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL
(Received the assent of the Governor General on the 23rd May,
1879)

An Act to amend the law relating to Coast-lights
in the eastern part of the Bay of Bengal.

WHEREAS it is expedient to increase the coast-light dues paid under the provisions of Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*), and to render chargeable with coast-light dues certain vessels which are not now so chargeable; It is hereby enacted as follows:—

Preliminary.

1. This Act may be called "The Burma Coast-lights Act, 1879": Short title.

It shall come into force on the first day of July, 1879; Commencement.

and it shall extend to the territories respectively administered by the Governors of Fort St. George and Bombay in Council, the Lieutenant-Governor of Bengal and the Chief Commissioners of British Burma and the Andaman and Nicobar Islands. Local extent.

But nothing herein contained shall apply to any vessel belonging to or in the service of Her Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State.

2. Act No. XIII of 1867 (*to provide for the establishment and maintenance of Coast-lights in the eastern part of the Bay of Bengal*) is hereby repealed. Repeal.

But

[Price one anna and three pies.]

But any appointment made under the said Act shall be deemed to have been made under this Act.

3. In this Act, unless there is something repugnant in the subject or context,—

“Customs-Collector” means a Customs-Collector appointed under the Sea Customs Act, 1878, and includes any person appointed by the Local Government by name or in virtue of his office to discharge the functions of a Customs-Collector under this Act at any port :

“Vessel” includes anything made for the conveyance by water of human beings or of property :

“Master,” when used in relation to any vessel, means any person (except a Pilot or Harbour-Master) having, for the time being, the charge or control of such vessel :

“Voyage” means the whole distance between a vessel’s place of departure and her final place of arrival ; but the return of a vessel from any place shall, notwithstanding the terms of any charter-party, be deemed a distinct voyage.

Coast-light Dues.

4. For the purpose of establishing and maintaining coast-lights in the eastern part of the Bay of Bengal, a toll, hereinafter called “coast-light dues,” shall be paid in respect of every vessel of the burden of fifty tons and upwards making any voyage mentioned in the schedule hereto annexed, at the rate of one anna and six pie per ton of burden :

Provided that such vessel sails from or enters during the course of, or at the termination of, any such voyage a port in British India, or takes in, or discharges, cargo off the coast of British India.

5. The said coast-light dues shall become due and payable—

(a) in the case of a vessel clearing out of a port in British India upon any such voyage—previous to the grant of any port-clearance ;

17. in the case of a vessel entering a port in British India in the course, or at the termination, of any such voyage—immediately upon her entering such port :

Provided that the said dues shall not be levied more than once on any vessel in the course of the same voyage.

6. The Governor General in Council may from time to time, by notification in the *Gazette of India*, reduce or raise the rate of coast-light dues in respect of all vessels or any particular class of vessels :

Power to vary rates of dues.

Provided that such rate shall not in any case exceed the rate fixed by section four.

7. The Customs-Collector shall collect the coast-light dues,

Collection of dues.

and shall grant to the person paying the same a voucher in writing under his hand, setting forth the name of his office, the port at which the coast-light dues are paid, the amount so paid, the name, tonnage and other proper description of the vessel in respect of which such payment is made, and the voyage on which she is or has been bound.

Voucher to be given.

8. Within twenty-four hours after the arrival within a port of any vessel chargeable with coast-light dues, the master of such vessel shall give notice of such arrival to the Customs-Collector.

Master to in port arrival.

9. In order to ascertain the tonnage of any vessel chargeable with coast-light dues, the following rules shall be observed :—

Tonnage of vessel chargeable with coast-light dues how ascertained.

(a) If such vessel be a British registered vessel or a vessel registered under Act No. X of 1841 or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, the Customs-Collector may require the owner or master of such vessel, or any other person having possession of her register, to produce such register for inspection. If any such owner, master or other person refuses to produce such register, or otherwise to satisfy the Customs-Collector as to what is the true

If registered

true tonnage of the vessel in respect of which such coast-light dues are payable, he shall be punished with fine which may extend to one hundred rupees, and the Customs-Collector may cause such vessel to be measured and the tonnage thereof to be ascertained; and in such case the owner or master of such vessel shall also be liable to pay the expenses of such measurement.

If not registered.

(b) If such vessel be not a British registered vessel or a vessel registered under Act No. X of 1841 or Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, and the owner or master thereof fails to satisfy the Customs-Collector as to what is her true tonnage according to the mode of measurement prescribed by the law in force for the time being for regulating the measurement of British registered vessels, the Customs-Collector shall cause such vessel to be measured and the tonnage thereof, according to the mode aforesaid, to be ascertained; and in such case the owner or master of such vessel shall be liable to pay the expenses of such measurement.

On refusal to pay dues or expenses, the Collector may distrain and sell.

10. If the master of any vessel refuses or neglects to pay to the Customs-Collector on demand by him the amount of any dues or expenses payable in respect of such vessel under this Act, the Customs-Collector may distrain or arrest such vessel, and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of such dues or expenses is paid;

and in case any part of such dues or expenses, or of the costs of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest so made, the Customs-Collector may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of such sale may satisfy such dues, expenses and costs (including the costs of sale) remaining unpaid, and shall render the surplus (if any) to the master of such vessel upon demand.

No port-clearance to be granted until dues, etc., are paid.

11. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such port-clearance until her master or some other person

person has paid, or secured to the satisfaction of such officer, the amount of all dues, expenses and costs with which such vessel is chargeable under this Act, and of any fine to which any person is liable for anything done by him in contravention of this Act.

12. The master of any vessel departing from or entering any port in British India upon, or in the course of, or at the termination of, any voyage, shall, upon the demand of the Customs-Collector, specify upon what voyage she is or has been bound.

Master to specify on demand voyage on which vessel is bound.

13. If the master of any vessel evades, or attempts to evade, the payment of any coast-light dues, expenses or costs payable in respect of such vessel under this Act, he shall be punished with fine which may extend to two hundred rupees.

Penalty for evading payment of dues &c.

Determination of Disputes under Act.

14. If any dispute arises as to whether any vessel is chargeable with any coast-light dues, expenses or costs under this Act, or as to the amount of such dues, expenses or costs, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined in the towns of Calcutta, Madras and Bombay by a Presidency Magistrate, and elsewhere by any Magistrate exercising at the place where the dispute arises powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class. All decisions under this section shall be final.

Magistrate to decide disputes.

Prosecutions under other Laws.

15. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act: provided that no person shall be punished twice for the same act or omission.

Saving of prosecution under other laws.

Statement of Receipts and Expenditure.

16. The Governor General in Council shall, on or before the first day of October in each year, publish in the *Gazette of India* a statement showing the amount

Statement receipts and expenditure to be published.

Burma Coast-lights. [ACT IX, 1879.]

amount received on account of coast-light dues during the year ending on the thirty-first day of March last preceding, and the amount expended during the same period on the establishment and maintenance of coast-lights in the eastern part of the Bay of Bengal.

AND whereas it is also expedient to amend the Indian Ports Act, 1875, in manner hereinafter appearing; It is hereby further enacted as follows:—

Amendment
of Indian
Ports Act,
1875

17. For section 77 of the same Act, the following shall be substituted:—

Application
of Maulmain
and Bassein
port-dues.

“77. The port-due leviable under this Act in either of the ports of Maulmain and Bassein shall, to the extent of one aana and six pie per ton, be applicable in the first place to defray the expenses of maintaining the existing port-lights of British Burma.”

SCHEDULE.

(See SECTION 4).

1. A voyage to or from Chittagong or any place west of the longitude of Chittagong—
 - (a) from or to any port in British Burma, or
 - (b) from or to any port in the Andaman and Nicobar Islands or any place east of the longitude of Mergui, by a course passing between the northern extremity of the Andaman Islands and the coast of British Burma
2. A voyage to or from any port in British Burma—
 - from or to any other port in British Burma,
 - except voyages to or from Maulmain, from or to Tavoy or Mergui, or to or from Tavoy, from or to Mergui.
3. A voyage to or from Rangoon and any port in British Burma west of the longitude of Rangoon—
 - from or to any place east of the longitude of Mergui.
4. A voyage to or from any port in British Burma other than Tavoy and Mergui—
 - from or to any port in the Andaman and Nicobar Islands.

ACT NO. X OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 23rd May, 1879).

An Act to provide for the recovery of certain advances made to Landholders.

WHEREAS it is expedient to provide for the recovery of certain advances made in the territories respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmer, for certain purposes other than those specified in the Land Improvement Act, 1871; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The Northern India Takkávi Act, 1879;"

Short title.

and shall come into force on the first day of July, 1879.

Commencement.

2. On and from that day, the fifty-second section added to the Panjáb Laws Act, 1872, by Act No. XII of 1878 (*An Act for the further amendment of the Panjáb Laws Act, 1872*), shall, except as to advances made before that day, be repealed.

Act IV of 1872, section 52, repealed.

3. The Local Government may from time to time, with the previous sanction of the Governor General in Council, prescribe rules as to advances to be made to owners and occupiers of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Act, 1871, but connected with agricultural objects.

Recovery of certain takkávi advances.

All such rules shall be published in the local official Gazette.

Every

[Price one anna and three pies.]

Northern India Takṭāvi. [ACT X, 1879.]

Every advance made in accordance with such rules, shall, when it becomes due, be recoverable from the person to whom it was made, or from any person who has become surety for the repayment thereof, as if it was an arrear of land-revenue due by the person to whom the advance was made or by his surety.

ACT No. XI OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 21st July, 1879)

The Local Authorities Loan Act, 1879.

WHEREAS it is expedient to re-enact the Local Preamble. Public Works Loan Act, 1871, with the amendments hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called “The Local Authorities Short title Loan Act, 1879.”

It extends to the whole of British India, and shall come into force upon the passing thereof. Local extent Commencement.

2. The Local Public Works Loan Act, 1871, is hereby repealed. But all applications, declarations, authorizations, attachments, loans and rules made under the said Act shall be deemed to have been made under this Act. Repeal of Act XXIV of 1871.

3. In this Act, “local authority” means any body corporate, municipal committee, or other persons legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax upon any persons within any local area; and “Local authority.”

“funds,” used with reference to any local authority, includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority. “Funds.”

4. Any local authority desiring to obtain a loan, on the security of its funds or any portion thereof, for the carrying out of any works which it is legally authorized Loans for works may be granted on security of funds.

[Price one anna and nine pies.]

authorized to carry out may, in manner provided by the rules made by the Governor General in Council under the power hereinafter conferred, apply to the Local Government for such loan.

Power to
Governor
General in
Council to
make rules

5. The Governor General in Council may from time to time make rules consistent with this Act as to—

(1) the nature of the funds on the security of which loans may be made ;

(2) the works for which loans may be made ;

(3) the manner of making applications for loans ;

(4) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries ;

(5) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published ,

(6) the cases in which the Local Government may make loans without the previous sanction of the Governor General in Council, and the cases in which such previous sanction must be obtained ;

(7) the manner of recording and enforcing the conditions on which such loans are to be made ;

(8) the manner and time of making loans ;

(9) the inspection of any works carried out by means of loans ,

(10) the instalments by which loans shall be repaid, the interest to be charged on loans, and the manner and time of repaying loans and of paying the interest thereon ;

(11) the sum to be charged against the funds which are to form the security for the loan, as costs in effecting the loan ;

(12) the attachment of such securities, and the manner of disposing of or collecting them ;

(13) the accounts to be kept in respect of loans, and as to all other matters incidental to carrying this Act into effect.

All

All such rules shall be published in the *Gazette of India*.

6. If any loan made under such rules, or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the Local Government may attach the funds on the security of which the loan was made. After such attachment, no person except an officer appointed in this behalf by the Local Government shall in any way deal with the attached funds; but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interest and costs due in respect thereof, and of all expenses caused by the attachment and subsequent proceedings.

Remedy by attachment if loan not repaid.

Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law; but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of a liability incurred under this Act.

Attachment not to defeat prior charges legally made.

7. The Local Government, with the previous sanction of the Governor General in Council, may authorize any local authority which might, under the provisions hereinbefore contained, have borrowed money for any work upon the security of its funds, to borrow money from any other person for such work upon such security; and, if any such loan or the interest thereon is not duly paid, the Local Government shall, upon the application of the lender, attach such funds for his benefit in manner provided by section six.

Local Govt may authorize parties to borrow from private persons under this Act.

The Governor General in Council may, in respect of loans to be taken under this section, exercise the power conferred by section five, so far as the same may be applicable to the case of such loans.

Power to make rules in regard to such loans.

8. Except as provided by this Act and the rules made hereunder, no local authority shall for any purpose borrow money upon or otherwise charge its funds;

Loans not to be effected except under this Act

Local Authorities Loan. [ACT XI, 1879.]

funds ; and any contract otherwise made for that purpose after the passing of this Act shall be void :

Provided that nothing herein contained shall be deemed—

(a) to preclude the Municipality of Calcutta, Madras or Bombay, or the Trustees of the Port of Bombay, or the Commissioners for making improvements in the Port of Calcutta, or any like body hereafter created for the Port of Madras, from exercising the borrowing powers conferred on them by any special enactment now or hereafter in force ; or

(b) to preclude any other local authority from exercising the borrowing power (if any) conferred on it by any such enactment with a view to raising money for any purpose other than the carrying out of works.

Application
of Act to
loans existing
previous to
the fifth of
September,
1871.

9. The Secretary of State in Council shall be entitled to the remedy mentioned in section six for the recovery of any money lent by him to any local authority before the fifth day of September, 1871, and the interest due on such money ; and the Governor General in Council or the Local Government may declare that any person who before the said fifth day of September, 1871, has lent money to any local authority shall be entitled to the said remedy for the recovery of such money, or of the interest due thereon.

ACT No. XII ^{of} 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 29th July, 1879)

An Act to amend the Code of Civil Procedure, the Registration Act, 1877, and the Limitation Act, 1877.

WHEREAS it is expedient to amend the Code of Civil Procedure, It is hereby enacted as follows. — Preamble.

1 The following portions of the said Code shall be repealed (namely) — Repeal of certain portions of Act X of 1877.

In section 4, the words and figures “The Panjáb Courts Act, 1865”, and “The Panjáb Appeals Act, 1873 ”

In section 5, the third sentence

In section 51, the words “with the permission of the Court,”.

In section 52, from and including the words “and when he makes it out of Court” to the end :

In section 61, the words “bill of exchange or other”.

In section 64, the words “or as soon thereafter as may be practicable”.

In section 80, the words “or to receive the copy of the summons” :

In section 97, the words “a duly authorized” :

In sections 113 and 177, the word “other” :

In section 115, the second paragraph :

In section 131, the words “in whose plaint, written statement or affidavits reference is made to any document,”

[Price nine annas and three pices]

ment,” and the words “in the presence of such officer as the Court appoints in this behalf,” :

In section 199, the words from and including “and in” to the end :

In section 221, the second paragraph :

In section 224, the word “therewith” :

In section 230, paragraphs three and four, the words “unless the Court is satisfied that on the last preceding application due diligence was used to procure complete satisfaction of the decree; and the order of the Court granting any such subsequent application shall be conclusive evidence that due diligence was used to procure such satisfaction. And no such subsequent application shall be granted” :

In section 246, clause (e) and the letters and parentheses (f) and (g) .

In section 259, the words “and keeping the same under attachment until the further order of the Court” :

In section 339, paragraph three, the words “to the proper officer of the Court” .

In section 353, the words “within three months from its publication,” and “within three months from the publication of the schedule” .

In section 355, paragraph two, the words “from arrest or imprisonment, as the case may be” :

In sections 107 and 408, the words “upon such examination” :

In section 638, the figures “261” :

In the second schedule, the words and figures “section 618 (so far as relates to arrests)” :

In the fourth schedule, No. 152, the words “ON SECURITIES BEING GIVEN”, and “on security to the amount of Rs. decreed to the in the above suit, being given to your satisfaction” .

**Amendment
of section 2**

2. In section 2, for the definitions of “judgment” and “decree,” the following shall be substituted (namely) :—

“ ‘decree’

1879.] *Civil Procedure Code Amendment.*

“‘decree’ means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244 but not specified in section 588, is within this definition: an order specified in section 588 is not within this definition.”

“‘order’ means the formal expression of any decision of a Civil Court which is not a decree as above defined.”

“‘judgment’ means the statement given by the Judge of the grounds of a decree or order.”

In the same section, to the definition of “signed”, the following words shall be added (namely): “it also includes stamped with the name of the person referred to”.

3. In section 3, for the last paragraph, the following shall be substituted (namely):— Amendment
of section 3.

“Save as provided by section 99 A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted or appeal presented before the first day of October, 1877, or any proceedings after decree that may have been commenced and were still pending at that date.”

4. In section 4, for the words “local law” in each of the places where they occur, the words “law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council” shall be substituted; and for the words “landlord and tenant,” the words “landholders and their tenants or agents” shall be substituted. Amendment
of section 4.

Act No. XVIII of 1878 (*to amend the Code of Civil Procedure, section 4*) is hereby repealed.

5. In section 5, to the first sentence, the following shall be added (namely): “and to all other Courts (other than the Courts of Small Causes in the towns Amendment
of section 5.

of Calcutta, Madras and Bombay) exercising the jurisdiction of a Court of Small Causes."

Amendment
of section 13.

6. In section 13, for the first paragraph, the following shall be substituted (namely) :—

" 13. No Court shall try any suit or issue in which the matter directly and substantially in issue, having been directly and substantially in issue in a former suit in a Court of competent jurisdiction, between the same parties, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally decided by such Court";

and in the same section, *Explanation I*, for the word "confessed," the word "admitted" shall be substituted.

Amendment
of section 43

7. In section 43, paragraph one, for the words "arising out of", the words "which the plaintiff is entitled to make in respect of" shall be substituted: in the same section, paragraph two, for the word "for" (in each of the places where it occurs), the words "in respect of" shall be substituted; and in the same section, paragraph three, for the word "claim," the words "cause of action" shall be substituted;

and to the same section the following paragraph shall be added:

"For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action."

Amendment
of section 44.

8. To section 44 the following words shall be added (namely): "or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents."

Amendment
of section 45

9. In section 45, for paragraph one, the following shall be substituted (namely): "Subject to the rules contained in chapter II and in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit":

1879.] *Civil Procedure Code Amendment.*

in the same section, paragraph two, for the words "the defendant," the words "any defendant, or at any subsequent stage of the suit, if the parties agree" shall be substituted.

10. In section 50, for the word "abode" in each of the places where it occurs, the word "residence" shall be substituted. Amendment of section 50.

11. To section 51 the following proviso shall be added (namely) :— Amendment of section 51.

"Provided that, if the plaintiff, by reason of absence or for other good cause, is unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf".

12. In sections 51, 53, 115, 316, 393 and 403, for the word "subscribed" (wherever it occurs), the word "signed" shall be substituted: in sections 115 and 316, for the word "subscribing", the word "signing" shall be substituted; and in section 103, for the word "subscription", the word "signing" shall be substituted. Amendment of sundry sections.

13. In section 58, for the word "filed", the word "produced" shall be substituted. Amendment of section 58.

14. In section 68, for the word "cognizable", the word "heard" shall be substituted. Amendment of section 68.

15. In section 93, after the word "levied", and in section 95, after the word "paid", and in section 397, after the word "be", the words "within a time to be fixed by the Court" shall be inserted. Amendment of sections 93, 95 and 397.

16. After section 99, the following shall be inserted (namely) :— Addition to section 99

"99 A. If, after a summons has, whether before or after the first day of October, 1877, been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant. Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

"In

“In such case the plaintiff may (subject to the law of limitation) bring a fresh suit”.

Amendment
of section
108

17 In section 108, paragraph one, the words and figures “under section 100” shall be omitted; and in the same section, paragraph two, for the words “it be proved to the satisfaction of the Court that the defendant”, the words “he satisfies the Court that the summons was not duly served, or that he” shall be substituted.

Amendment
of section
131

18. In section 131, paragraph one, for the word “Every”, the word “Any” shall be substituted, and for the words “such document”, the words “any specified document” shall be substituted.

Amendment
of section
136

19. In section 136, after the word “discovery” (in each of the places in which it occurs), the word “production” shall be inserted.

Amendment
of section
139

20. In section 139, for the words and figures “the production of which has been called for under section 138 and which has not been produced,” the words and figures “which should have been, but has not been, produced in accordance with the requirements of section 138” shall be substituted.

Amendment
of section
207.

21. In section 207, for the words “or numbers” to the end, the following words shall be substituted (namely): “or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.”

Amendment
of sections
211 and 212

22. In section 211, for the words “land or other”, the words “the recovery of possession of immoveable” shall be substituted: to the same section the words “together with interest on such profits” shall be added; and in section 212, before the word “immoveable,” the words “the recovery of possession of” shall be inserted.

Addition to
section 215

23. After section 215, the following section shall be inserted (namely):—

Suit for
account be-
tween prin-
cipal and
agent.

“215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not heretofore provided for, where it is necessary, in order to ascertain the amount of
money

1879.] *Civil Procedure Code Amendment.*

money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit."

24. To section 220 the following words shall be added (namely): "Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money." Amendment of section 220.

25. In section 223, clause (c), for the words "district within which", the words "local limits of the jurisdiction of" shall be substituted; and in the penultimate paragraph of the same section, for the words "local Court of Small Causes", the words "Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be," shall be substituted. Amendment of section 223.

26. In section 229, for the words "Native Prince or State in India," the words "Foreign Prince or State," shall be substituted. Amendment of section 229.

27. In section 230, clause (b), for the words "the payment of money or the delivery of property by instalments,—the date of the default in paying or delivering the instalment", the following words shall be substituted (namely): "any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property". Amendment of section 230.

28. In the second proviso to section 232, after the word "decree", the words "for money" shall be inserted. Amendment of section 232.

29. In section 235, for the words "in manner hereinbefore provided for the verification of plaints," the following words shall be substituted (namely): "by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case". Amendment of section 235.

30. In sections 236 and 237, for the words "If the application be", the words "Whenever an application is made" shall be substituted. Amendment of sections 236 and 237.

31. In section 241, clause (c), after the word "execution", the words "discharge or satisfaction" shall be inserted. Amendment of section 241.

32. In

Amendment
of section
245

32 In section 245, for the first sentence, the following shall be substituted (namely): “The Court, on receiving an application for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected.”

Amendment
of section
246

33. In section 246, for *Explanation I*, the following shall be substituted (namely):—

“*Explanation I*.—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court.”

In *Explanation II*, after the words “assignor as”, the words “in respect of judgment-debts due” shall be inserted.

Amendment
of section
252

34. In section 252, for the words “If no such property can be found, and the judgment-debtor”, the words “If no such property remains in the possession of the judgment-debtor, and he” shall be substituted.

Addition to
section 257

35. After section 257, the following shall be inserted:—

Agreement to
give time to
judgment-
debtor

‘257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable.

Agreement
for satisfaction
of judgment-debt

“Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void unless it is made with the like sanction.

“Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus, if any, shall be recoverable by the judgment-debtor.”

36. For

26. For section 258, the following shall be substituted :—

Amendment
of section
258
Payment to
decree-holder

"258. If any money payable under a decree is paid out of court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

"The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

"No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid."

37. For the second paragraph of section 259, the following shall be substituted :—

Amendment
of section
259

"When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist."

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Amendment
of section
260.

38. In section 260, in the first paragraph, after the words "the performance of", the words "or abstention from" shall be inserted; and for the second paragraph, the following paragraphs shall be substituted (namely):—

"When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

"If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist."

Amendment
of section
264.

39. In section 264, after the words "the same," the words "and not bound by the decree to relinquish such occupancy" shall be inserted.

Amendment
of section
265.

40. To section 265 the following words shall be added (namely): "and according to the law, if any, for the time being in force for the partition, or the separate possession of shares, of such estates".

Amendment
of section
268.

41. For the last paragraph of section 268, the following shall be substituted (namely):—

"In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court.

"A copy of every such order shall be fixed up in a conspicuous part of the court-house and shall be served on the officer so required.

"Every such officer may from time to time pay into court any portion so withheld, and such payment shall discharge the Government or the Railway Com-

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pany, as the case may be, as effectually as payment to the judgment-debtor."

42. For the first paragraph of section 271, the following shall be substituted:—

Amendment
of section
271.

"271. No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be."

Seizure of
property in
building.

43. To section 289, paragraph one, the following words shall be added (namely): "and a copy thereof shall be fixed up in the court-house and, in the case of land paying revenue to Government, also in the Collector's office"; and in section 290, for the words "notification has been affixed", the words "copy of the proclamation has been fixed up" shall be substituted.

Amendment
of sections
289 and 290.

44. In section 291, for the first eight words, the following shall be substituted (namely): "The Court may in its discretion adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale"; and in the same section, after the proviso, the following sentence shall be inserted (namely): "Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it."

Amendment
of section
291.

45. To section 294 the following paragraph shall be added (namely):—

Amendment
of section
294.

"When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder."

46. In

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Amendment
of section
295.

46. In section 295, first proviso, after the words "shall not", the words "as such" shall be inserted, and after the second proviso, the following shall be inserted :—

Third proviso
to section 295.

"Provided also that, when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale

secondly, in discharging the interest and principal money due on the incumbrance;

thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof."

Amendment
of section
305.

47. In section 305, paragraph two, after the word "therein," the words and figures "and notwithstanding anything contained in section 276" shall be inserted; and for the last paragraph, the following shall be substituted (namely) :—

"Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court."

Amendment
of section
314.

48. In section 314, after the word "property", the words "in execution of a decree" shall be inserted.

Amendment
of section
316.

49. For section 316, the following shall be substituted (namely) :—

Certificate to
purchaser of
immoveable
property.

"316. When a sale of immoveable property has become absolute in manner aforesaid, the Court shall grant a certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall

vest in the purchaser from the date of such certificate and not before: provided that the decree under which the sale took place was still subsisting at that date."

50. In section 320, paragraph two, after the word "also", the words "notwithstanding anything hereinafter contained," shall be inserted; and for sections 321 to 325, both inclusive, the following shall be substituted (namely):—

Amendment of sections 320 to 325.

"321. When the execution of a decree has been so transferred, the Collector may—

Power of Collector when execution of decree is so transferred.

(a) proceed as the Court would proceed under section 305; or

(b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or

(c) sell the property ordered to be sold or so much thereof as may be necessary."

"322. When the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided."

Procedure of Collector when execution of decree so transferred.

"322A. In the case mentioned in section 322, the Collector shall publish a notice calling upon—

Notice to be given to decree holders and to persons having claims on property.

(a) every person holding a decree for money against the judgment-debtor capable of execution by sale of his immoveable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;

(b) every

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(b) every person having any claim on the said property, to submit to the Collector a statement of such claim, and to produce the documents, if any, by which it is evidenced.

"Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise."

Amount of money-decrees to be ascertained, and immoveable property available for their satisfaction.

"322B. Upon the expiration of the said period the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may from time to time adjourn such hearing and enquiry.

"If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

"If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the

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final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision."

"322C. The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322A and 322B, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector."

When District Court may issue notices and hold inquiry.

"322D. The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable as, a decree."

Effect of decision of Court as to dispute arising under section 322B or 322C.

"323. Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

Scheme for liquidation of money-decree.

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or if it appears that the amount with interest (if any) in accordance with the decree, and when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304),

(a) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or

(b) by mortgaging the whole or any part of such property; or

(c) by selling part of such property; or

(d) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(e) partly

(e) partly by one of such modes, and partly by another or others of such modes.

“(3) For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

“(1) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

“In proceeding under paragraphs (2), (3) and (4) of this section, the Collector shall be subject to such rules consistent with this Act as may from time to time be made in this behalf by the Chief Controlling Revenue-Authority.”

Recovery of
balance, if
any, after
letting or
management.

“324. If, on the expiration of the letting or management under section 323, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.”

“324A. The

“324A. The Collector shall from time to time render to the Court which made the original order under section 304 an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Collector to
render ac-
counts to the
Civil Court.

“Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

“Such balance shall be applied by the Court as follows :—

Application
of balance

firstly, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit ; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property or otherwise as the Court may under section 295 direct ; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit ; and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered ;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied ;

and

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and the residue, if any, shall be paid to the judgment-debtor or such other person, if any, as the Court directs."

Sales how to
be conducted

"325. When the Collector sells any property under this chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may—

(a) fix a reasonable reserved price for each lot ;

(b) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment ;

(c) buy-in the property offered for sale, and resell the same by public auction or private contract, as he thinks fit."

Restrictions
as to aliena-
tion by
judgment-
debtor or his
representa-
tive, and
prosecution
of remedies
by decree-
holders

"325A. So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for money.

"During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

"The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived."

Provision
where prop-
erty is in
several
districts.

"325B. When the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall
from

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from time to time be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct."

"325C. In exercising the powers conferred on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents."

Powers of Collector to compel attendance of parties and witnesses and production of documents.

51. In section 326, for the last sentence, the following shall be substituted (namely) :—

Amendment of section 326.

"In such case the provisions of sections 320, paragraph two, to 325C (both inclusive) shall apply, as far as they are applicable."

52. In section 331, paragraph two, for the words and figures "the Specific Relief Act, 1877, section 9," the word and figure "chapter V" shall be substituted; and to the same section the following paragraph shall be added (namely) :

Amendment of section 331.

"Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise."

53. In section 332, first paragraph, for the word "defendant", the word "judgment-debtor" shall be substituted; and for the other paragraphs the following shall be substituted (namely) :

Amendment of section 332.

"If after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application."

"In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified."

"The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property ;

property ; but, subject to the result of such suit, if any, the order shall be final."

Amendment
of section
333.

Transfer of
property by
judgment-
debtor after
institution of
suit.

Amendment
of section
335.

Obstruction
by claimant
other than
judgment-
debtor.

54. For section 333, the following shall be substituted (namely) :—

" 333. Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made."

55. In section 335, for the first paragraph, the following shall be substituted (namely) :—

" 335. If the purchaser of any such property is resisted or obstructed by any person, other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit";

and in the second paragraph of the same section, for the word "conclusive", the word "final" shall be substituted.

Amendment
of section
336.

56. In section 336, for the first proviso, the following shall be substituted :—

" Provided that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open :

" But when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found : provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who according to the customs of the country does not appear in public, the officer shall give notice to her that she is at liberty to withdraw ; and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest."

57. In

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57. In section 339, paragraph four, after the word “made”, the words “to the proper officer of the Court” shall be inserted; and to the same paragraph the following words shall be added (namely): “and the subsequent payments (if any) shall be made to the officer in charge of the jail.”

Amendment
of section
339.

58. In section 341, for clauses (a), (b), (c), (d) and (e) and the proviso, the following shall be substituted (namely):—

Amendment
of section
341.

“(a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail; or

“(b) on the decree being otherwise fully satisfied; or

“(c) at the request of the person on whose application he has been imprisoned; or

“(d) on such person omitting to pay the allowance as hereinbefore directed; or

“(e) if the judgment-debtor be declared an insolvent, as hereinafter provided; or

“(f) when the term of his imprisonment, as limited by section 342, is fulfilled:

“Provided that, in the second, third and fifth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.”

59. For section 344, the following shall be substituted:—

Amendment
of sections
344, 345, 347,
349, 350, 351,
356, 357, 358,
359 and 360.
Power to
apply for
declaration
of insol-
vency.

“344. Any judgment-debtor arrested or imprisoned in execution of a decree for money, or against whose property an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

“Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

“Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.”

In

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In section 345, for the first line and clause (a), the following shall be substituted namely :—

Contents of
application.

“345. The application, when made by the judgment-debtor, shall set forth—

“(a) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody.”

And to the same section the following paragraph shall be added :—

“The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.”

In section 347, for the first paragraph, the following shall be inserted (namely) :—

Service of
copy of
application
and notice.

“347. The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in court and served at the applicant's expense—

“where the applicant is the judgment-debtor—on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application :

“where the applicant is the decree-holder—on the judgment-debtor or his pleader.”

To section 349 the following words shall be added (namely) : “or release him on his furnishing sufficient security that he will appear when called upon.”

In sections 349, 350 and 351, for the word “applicant” wherever it occurs, the word “judgment-debtor” shall be substituted.

In section 351, clause (b), after the word “imprisoned”,

prisoned", the words "or the order of attachment was made," shall be inserted.

In section 356, for clause (d), the following clauses shall be substituted :—

"(d) to discharge according to their respective priorities all debts secured by mortgage of the insolvent's property :

"(e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference."

And to the same section the following shall be added (namely) :—

" Provided that, in any local area in which a declaration has been made under section 320 and is in force, no sale of immoveable property paying revenue to Government or held or let for agricultural purposes shall be made by the Receiver; but after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the monies already received, (b) the immoveable property of the insolvent remaining unsold, and (c) the incumbrances, if any, existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 both inclusive, as he thinks fit, and subject to the provisions of those sections so far as they may be applicable; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise."

In section 357, for the figures "355", the figures and word "351 or 355" shall be substituted ;

and for the words "decrees against him held by the scheduled creditors are fully satisfied or become capable of being executed", the following shall be substituted (namely) : " debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355."

For

For section 358 the following shall be substituted :—

Declaration
that in-ol-
vent is dis-
charged
from liabili-
ty.

“358. If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall, declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.”

In section 359, after the words “sentence him”, the words “by order in writing” shall be inserted.

To section 360 the following paragraph shall be added (namely) :—

“Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein where the property of the judgment-debtor exceeds in value two thousand five hundred rupees, or the amount of the pecuniary claims against him exceeds five thousand rupees, or such property or any part thereof is situate outside British Burma.”

Amendment
of sections
361, 362,
363, 365 and
368.

60. In sections 361, 362, 363, 365 and 368, for the words “cause of action” wherever they occur, the words “right to sue” shall be substituted ; and to section 368 the following clause shall be added (namely) :

“When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate.”

Amendment
of sections
364 and 366.

61. In section 364, paragraph one, and section 366, paragraph one, after the word “If”, the words “within the time limited by law” shall be inserted ; and in the latter section, paragraph one, before the word “award”, the words “shall, on the application of the defendant,” shall be inserted.

Amendment
of section
371.

62. In section 371, paragraph two, after the word “deceased”, the word “or” shall be inserted.

Amendment
of section
373.

63. In section 373, paragraph one, for the words “for the part”, the words “in respect of the part” shall be substituted ; and to paragraph two, the words “or in respect of the same part” shall be added.

Amendment

64. In section 375, after the word “adjusted”, the
words

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words "wholly or in part" shall be inserted: after the words "respect to", the words "the whole or any part of" shall be inserted; and to the same section shall be added the words "so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise or satisfaction."

of section 376.

65. In section 377, for the first seven words, the following shall be substituted (namely): "Notice in writing of the deposit shall be given through the Court".

Amendment of section 377.

66. In sections 381, 177 and 183, after the word "affidavit", the words "or otherwise" shall be inserted.

Amendment of sections 381, 177 and 183.

67. In section 386, for the second paragraph and the two provisos, the following shall be substituted (namely):

Amendment of section 386.

"Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, or to any pleader of a High Court whom the Court issuing the commission thinks fit to appoint."

68. In section 106, for the word "shall", the words "may, if he thinks fit," shall be substituted.

Amendment of section 106.

69. In section 112, after the word "dispaupered," the words and figures "or if the suit is dismissed under section 97 or 98," shall be inserted.

Amendment of section 112.

70. In section 113, for the word "Refusal", the words and figures "An order of refusal made under section 109" shall be substituted.

Amendment of section 113.

71. In section 124, after the words "against a public officer", the words "in respect of an act purporting to be done by him in his official capacity" shall be inserted; and in sections 128 and 429, after the words "public officer", the words "in respect of such act as aforesaid" shall be inserted.

Amendment of sections 124, 128 and 429.

72. In section 137, for the first sentence, the following shall be substituted (namely):

Amendment of section 137.

"In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator

administrator

administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit."

Amendment
of section
456.

73. In section 456, for the words "in the name of the minor", the words "in the name and on behalf of the minor or by the plaintiff" shall be substituted; and to the same section the following paragraph shall be added (namely):

"Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian: provided that he has no interest adverse to that of the minor."

Amendment
of section
469.

74. In section 469, after the word "arrest" and after the word "warrant" (in each of the places where it occurs), the words "or other process" shall be inserted; and in the second paragraph, after the words "signature, and", the words "in the case of a warrant of arrest" shall be inserted.

Amendment
of section
473.

75. To section 473 the words "and shall adjudicate on such claim" shall be added.

Amendment
of section
478.

76. In the last paragraph of section 478, for the words "an order for bringing the defendant", the words "a warrant to arrest the defendant and bring him" shall be substituted.

Amendment
of section
481.

77. To section 481 the following words shall be added (namely): "provided that no person shall be detained in prison under this section after he has complied with such order."

Amendment
of section
483.

78. In section 483, after the words "portion of his property", the words "within the jurisdiction of the Court" shall be inserted.

Amendment
of section
484.

79. In section 484, after the word "suit," the words "or that he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him" shall be inserted.

Amendment
of section
497.

80. In section 497, clause one, for the words "the injunction", the words "an injunction which it has granted" shall be substituted.

Amendment
of section
523.

81. In section 523, paragraph three, for the words "any of", the word "all" shall be substituted.

82. In

82. In the last clause of section 539, for the words "(where there is no Advocate General) be exercised by the Government Advocate or (where there is no Government Advocate)", the following words shall be substituted (namely): "outside the Presidency-towns be exercised also by the Collector or".

Amendment
of section
539.

83. In section 544, for the words "decree, and", the words "decree, and thereupon" shall be substituted.

Amendment
of section
544.

84. For section 555, the following shall be substituted (namely):—

Amendment
of section
555.

"555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply."

Right to
begin.

85. In section 560, for the words "if he proved that the respondent", the words "he satisfies the Court that the notice was not duly served, or that he" shall be substituted.

Amendment
of section
560.

86. In section 561, for the words "given to the appellant or his pleader seven days' notice of such objection", the words "filed a notice of such objection not less than seven days before the date fixed for the hearing of the appeal" shall be substituted.

Amendment
of section
561.

87. In section 566, paragraph two, for the word "issue," the word "issues," shall be substituted.

Amendment
of section
566.

88. For the first paragraph of section 582, the following shall be substituted (namely):—

Amendment
of section
582.

"582. The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under chapter V; and in sections 363 and 365, the word 'plaintiff' shall be held to include an appellant."

Appellate
Courts to
have same
powers as
Courts of ori-
ginal juris-
diction.

89. In section 584, clause (c), after the word "may", the word "possibly" shall be inserted.

Amendment
of section
584.

Amendment
of section
588.

90. In section 588, for clauses (a) to (w), the following shall be substituted (namely):—

“(1) orders under section 20, staying proceedings in a suit;

“(2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant;

“(3) orders under section 36 or section 66, directing that a party shall appear in person;

“(4) orders under section 44, adding a cause of action;

“(5) orders under section 47, excluding a cause of action;

“(6) orders returning plaints for amendment or to be presented to the proper Court;

“(7) orders under section 111, setting-off, or refusing to set-off, one debt against another;

“(8) orders rejecting applications under section 103 (in cases open to appeal) for an order to set aside the dismissal of a suit;

“(9) orders rejecting applications under section 108 for an order to set aside a decree *ex parte*;

“(10) orders under sections 113, 120 and 177;

“(11) orders under section 116 or section 245 rejecting, or returning for amendment, written statements or applications for execution of decrees;

“(12) orders under sections 143 and 145, directing anything to be impounded;

“(13) orders under section 162 for the attachment and sale of moveable property;

“(14) orders under section 168 for attachment of property, and orders under section 170 for the sale of attached property;

“(15) orders under section 261, as to objections to draft-conveyances or draft-endorsements;

“(16) orders under section 294, the first paragraph of section 312, or section 313, for confirming, or setting aside, or refusing to set aside, a sale of immoveable property;

“(17) orders

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“(17) orders in insolvency-matters, under section 351, 352, 353 or 357 ;

“(18) orders under section 366, paragraph two, section 367 or 368 ,

“(19) orders rejecting applications under section 370 for dismissal of a suit ;

“(20) orders under section 371 refusing to set aside the abatement or dismissal of a suit ;

“(21) orders disallowing objections, under section 372 ,

“(22) orders under section 451, 455 or 458, directing a next friend or guardian for the suit to pay costs ;

“(23) orders in interpleader-suits under section 173, clause (a), (b) or (d), section 175 or section 176 ;

“(24) orders under section 179, 180, 185, 192, 193, 496, 497, 502 or 503 ,

“(25) orders under section 514, superseding an arbitration ;

“(26) orders under section 518, modifying an award ;

“(27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear, an appeal ;

“(28) orders under section 562, remanding a case ;

“(29) orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree.”

91. For the first paragraph of section 589, the following shall be substituted : —

Amendment
of section
589.

“589. An appeal from any order specified in section 588, clauses (15), (16) and (17), shall lie to the High Court.”

What Courts
to hear
appeals.

92. In section 622, after the words “so tested,” the words “or to have acted in the exercise of its jurisdiction illegally or with material irregularity” shall be inserted.

Amendment
of section
622.

93. In section 638, for the figures and word “16 and 17,” the figures and word “16, 17 and 19,” shall

Amendment
of section
638.

be

be substituted; and in the last paragraph, after the word "any", the words "Judge of a" shall be inserted, and the word "its" shall be omitted.

Amendment
of section
642.

94. In section 642, for the second paragraph, the following shall be substituted (namely):—

"And, except as provided in sections 256 and 643, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtárs, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under this Code while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal."

Amendment
of section
648.

95. For section 648, the following shall be substituted (namely):—

Procedure
when person
to be arrested
or property
to be attached
is outside
the district.

"648. Where any Court desires that any person shall be arrested or any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

"The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment;

"and the Court making any arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he furnishes sufficient security for his appearance before that Court, or (where the case is one under chapter XXXIV) for satisfying any decree that may be passed

against

against him by such Court, in either of which cases the Court making the arrest shall release him."

96. To section 619 the following paragraph shall be added (namely):—

Amendment
of section
619.

"In the same chapter, the expression 'Court which passed a decree,' or words to that effect, shall, unless there be something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit."

97. After section 650, the following shall be inserted (namely):—

Addition to
section 650.

"650A. Summonses issued by any Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts: provided that the Courts issuing such summonses have been established by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts."

Service of
foreign sum-
monses.

98. In section 652, after the words "connected with", the words "its own procedure or" shall be inserted.

Amendment
of section
652.

99. In the first schedule, column third, opposite "XI of 1865," for the figures and word "11, paragraph 2," the figures and words "11, the last nineteen words of section 13, section 19" shall be substituted; and opposite "V of 1866", after the word "inclusive)" the words "and the schedule" shall be inserted.

Amendment
of schedule
I.

100. In the second schedule—

for the figures "230", the figures "223" shall be substituted:

Amendment
of schedule
II.

before

Civil Procedure Code Amendment. [ACT XII]

before the word and figures "Chapter XXI", the words and figures "Chapter XX, section 360—Power to invest certain Courts with insolvency-jurisdiction" shall be inserted :

after the words and figures "Chapter XXXIV.—Of arrest and attachment before judgment", the words and figures "except as regards immoveable property.

"Chapter XXXVI—Appointment of receivers" shall be inserted : and

for the figures "522", the figures "526" shall be substituted.

Amendment
of schedule
IV

101. In the fourth schedule, to the note to form No. 145 the following words shall be added (namely) : "and as fairly and accurately as possible the other particulars required by section 287 to be specified" ; in form No. 119, for the word "thirty", the word "sixty" shall be substituted ; and in form No. 172, for the word "seven" in each of the places where it occurs, the word "ten" shall be substituted.

Pending ap-
peals.

102. Every appeal now pending which would have lain if this Act had been in force on the date of its institution shall be heard and determined as if the Act had been in force on such date ; and every order heretofore passed purporting to transfer a case to a Collector under section 320, and every notification heretofore published purporting to be issued under section 360, shall be deemed to have been respectively passed and issued in accordance with law.

Orders and
notifications
under sec-
tions 320 and
360.

Interpreta-
tion-clause.

103. In the preceding sections of this Act, the words "section" and "schedule" respectively mean section of, and schedule annexed to, the said Code.

AND whereas it is also expedient to amend the Indian Registration Act, 1877, in manner hereinafter appearing ; It is hereby further enacted as follows :—

Amendment
of Act III of
1877, section
35.

104. In section 35 of the same Act, after the words "person appears", the words "to the registering officer" shall be inserted ; and after the words "refuse to register the document", the words "as to
the

1879.] *Civil Procedure Code Amendment*

the person so denying, appearing or dead" shall be inserted.

105. In section 31 of the same Act, for the figures "87", the figures "89" shall be substituted. Amendment of section 31

106. In section 83 of the same Act, for the words "Subordinate Magistrate of the first", the words "Magistrate of the second" shall be substituted. Amendment of section 83.

107. In section 89 of the same Act, for the words "the certificate", the words "the copy" shall be substituted; and to the same section the following paragraph shall be added (namely) :—

"Every Court granting a certificate under section 316 of the Code of Civil Procedure shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1"

AND whereas it is also expedient to amend the Indian Limitation Act, 1877, in manner hereinafter appearing; It is hereby further enacted as follows :—

108. In the second schedule to the said Indian Limitation Act 1877— Amendment of Act XV of 1877, sched. no II.

for No. 161, the following shall be substituted (namely) :—

<p>"161.—For the issue of a notice under section 258 of the same Code to show cause why the payment or adjustment therein mentioned should not be recorded as certified</p>	<p>Twenty days</p>	<p>When the payment or adjustment is made</p>
---	--------------------	---

to No. 166, column one, the following words shall be added (namely) :— "or on the ground that the decree-holder has purchased without the permission of the Court";

to No. 171, column one, the words "or appellant" shall be added; and in column three, after the word "plaintiff's," the words "or appellant's" shall be inserted;

after

Civil Procedure Code Amendment. [ACT XII, 1879.]

after No. 171, the following shall be inserted
(namely):—

"171A.—Under section 366 of the same Code, by the defendant.	Sixty days ...	The date of the plaintiff's death.
"171B.—Under section 368 of the same Code to have the representative of a deceased defendant made a defendant.	Ditto ...	The date of the defendant's death.
"171C.—Under section 371 of the same Code, for an order to set aside an order for abatement or dismissal	Ditto ...	The date of the order for abatement or dismissal "

and in No. 179, column three, paragraph 6, for the words "specified date) the date so specified," the words "certain date) such date" shall be substituted.

THE OUDH CIVIL COURTS ACT, 1879.

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SCHEDULE—Acts repealed.

ACT No. XIII OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL,
(Received the assent of the Governor General on the 30th July,
1879).

**An Act to amend the law relating to Civil Courts
in Oudh.**

WHEREAS it is expedient to amend the law relating Preamble.
to Civil Courts in Oudh, It is hereby enacted as
follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be called “The Oudh Civil Courts Short title
Act, 1879” :

It extends to all the territories for the time being Local extent.
administered by the Chief Commissioner of Oudh;
and it shall come into force on the first day of August, Commence-
1879. ment.

2. On and from that day the Acts mentioned in Repeal of
the schedule hereto annexed shall be repealed to the enactments
extent specified in the third column thereof.

3. In this Act, “district” means the area com- “District”
prised in the local limits of the jurisdiction of the defined
District Judge.

CHAPTER II.

CONSTITUTION OF COURTS.

4. Besides the Courts established under any other Grades of
enactment for the time being in force, there shall be Courts.
four grades of Civil Courts in Oudh (namely) :—

- (1) the Court of the Munsif;
- (2) the Court of the Subordinate Judge;
- (3) the Court of the District Judge;
- (4) the Court of the Judicial Commissioner.

5. The

Number of
Judges.

5. The number of District Judges, Subordinate Judges and Munsifs to be appointed under this Act shall be fixed, and may from time to time be altered, by the Local Government.

Appointment
of officers
under Act.

6. The Judicial Commissioner shall be appointed by the Local Government, with the previous sanction of the Governor General in Council.

The District Judges, Subordinate Judges and Munsifs shall be appointed by the Local Government :

Provided that the Judicial Commissioner holding office under the Oudh Civil Courts Act, 1871, at the time this Act comes into force, shall be deemed to have been appointed under this Act.

Additional
Judges.

7. When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the Local Government may, upon the recommendation of the Judicial Commissioner, and with the previous sanction of the Governor General in Council, appoint such Additional Judges as may be requisite.

Such Additional Judges shall perform any of the duties of a Judge under chapter III of this Act that the District Judge may, with the sanction of the Judicial Commissioner, assign to them; and in the performance of such duties they shall exercise the same powers as the District Judge.

Temporary
charge of
office of Dis-
trict Judge.

8. In the event of the death of a District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the station at which his Court is held, the Additional Judge, or, if there is no Additional Judge attached to such Court, the Subordinate Judge holding his court at the same place, shall, without relinquishing his ordinary duties, assume charge of the Judge's office at such station ;

and shall discharge such of the current duties thereof as are connected with the filing of suits and appeals, the issue of processes and the like functions ;

and shall continue in charge of the office until it is resumed by the District Judge, or assumed by an officer duly appointed thereto.

9. In

9. In the event of the death of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence on leave, when no person is appointed to act for him, the District Judge may transfer all or any of the proceedings pending in the Court of such Subordinate Judge either to his own Court or to the Court of a Subordinate Judge (if any) under his control.

Transfer of proceedings on death, &c., of Subordinate Judge.

All proceedings transferred under this section shall be disposed of as if they had been instituted in the Court to which they are so transferred.

10. The Court of the District Judge shall be deemed to be the principal Civil Court of original jurisdiction in the district over which his jurisdiction extends.

Principal Civil Court of original jurisdiction.

The control over all the Civil Courts in such district is invested in the said District Judge, but subject to the general control of the Judicial Commissioner.

Control over Civil Courts.

11. The Judicial Commissioner and the District Judges, Subordinate Judges and Munsifs shall appoint the ministerial officers of their respective Courts:

Appointment of ministerial officers of Courts.

Provided that, in the case of the Subordinate Judges and Munsifs, such appointments shall require the sanction of the District Judge to whose control they are respectively subject.

12. The Judicial Commissioner or any District Judge may transfer any ministerial officer from any Court under his control to any other Court under his control.

Transfer of ministerial officers.

13. Every Court under this Act shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

Seals of Courts.

14. The Local Government may fix, and from time to time alter, the place or places at which any Court under this Act is to be held.

Place of sitting of Courts.

15. The Local Government may from time to time, by notification in the official Gazette, invest such persons as it thinks fit with the powers of a Munsif, subject to such restrictions in respect of the value of the subject-matter of the suit as may be deemed proper, and withdraw such jurisdiction.

Power to confer Munsif's jurisdiction.

All persons so invested shall be called "Honorary Assistant Commissioners."

All Honorary Assistant Commissioners invested with powers under the Oudh Laws Act, 1876, section forty-three, and exercising such powers at the time this Act comes into force, shall be deemed to have been invested with the like powers under this section.

CHAPTER III.

GENERAL JURISDICTION.

Power to fix local limits of jurisdiction.

16. The Local Government shall, by notification in the official Gazette, fix, and may by like notification from time to time vary, the local limits of the jurisdiction of any Civil Court or person invested with the powers of a Civil Court under this Act.

Extent of original jurisdiction of District Judge;

17. Subject to the provisions of the Code of Civil Procedure, section fifteen—

(a) the jurisdiction of a District Judge extends to all original suits cognizable by the Civil Courts;

of Subordinate Judge;

(b) the jurisdiction of a Subordinate Judge extends to all suits in which the amount or value of the subject-matter in dispute does not exceed ten thousand rupees; and

of Munsif.

(c) the jurisdiction of a Munsif extends to all suits in which such amount or value does not exceed five hundred rupees:

Provided that the Local Government may from time to time, by notification in the official Gazette, confer upon any Munsif jurisdiction in suits in which the amount or value of the subject-matter in dispute exceeds five hundred rupees but does not exceed one thousand rupees,

and may by like notification withdraw such jurisdiction.

Appeals from Munsifs and Subordinate Judges.

18. Appeals from the decrees and orders of Munsifs and Subordinate Judges in original suits and proceedings shall, when such appeals are allowed by law, lie to the District Judge:

Provided

Provided that the Judicial Commissioner may from time to time, subject to such restrictions as he thinks fit, order that all or any of the appeals from the decrees and orders of a Munsif shall be preferred to such Subordinate Judge as may be mentioned in the order; and such appeals shall thereupon be preferred accordingly.

19. Every District Judge may from time to time, subject to the orders of the Judicial Commissioner, refer to any Subordinate Judge under his control any appeals pending before him from the decrees and orders of Munsifs; and such Subordinate Judge shall hear and dispose of such appeals accordingly.

Power to refer to Subordinate Judge appeals from Munsifs.

The District Judge may withdraw any appeals so referred, and hear and dispose of appeals so withdrawn.

20. Appeals from the decrees and orders of District Judges and Additional Judges in original suits and proceedings shall, when such appeals are allowed by law, lie to the Judicial Commissioner.

Appeals from District and Additional Judges.

21. When the decision of a Subordinate Judge, District Judge or Additional Judge passed in appeal confirms the decree or order of the Court of first instance, such decision shall, subject to the provisions of the Code of Civil Procedure, section six hundred and twenty-two, be final; but when such decision reverses or modifies such decree or order, the Judicial Commissioner may receive a second appeal if, on a perusal of the grounds of appeal and of copies of the judgments of the lower Courts, he is of opinion that a further consideration of the case is requisite for the ends of justice.

When Judicial Commissioner may receive second appeal.

22. For the purposes of sections eighteen to twenty-one (both inclusive), all decrees, orders and decisions passed before the date on which this Act comes into force shall be deemed—

Appeals from decrees, &c, passed before Act comes into force.

(a) if passed by a Commissioner,—to have been passed by a District Judge;

(b) if passed by a Deputy Commissioner or the Civil Judge of Lucknow, or by an Assistant or Extra-Assistant Commissioner in exercise of enhanced powers

powers conferred under the Oudh Civil Courts Act, 1871, section eleven, clause two,—to have been passed by a Subordinate Judge; and

(c) if passed by an Assistant or Extra-Assistant Commissioner otherwise than as aforesaid, or by a Tahsildár,—to have been passed by a Munsif.

Presiding
officer of
Court not to
try suit, &c.,
in which he
is interested

23. No presiding officer of any Court having jurisdiction under this Act shall try any suit or appeal in which he is a party or personally interested, or any appeal against a decree or order passed by himself, or shall adjudicate upon any proceeding connected with or arising out of such suit or appeal.

Mode of
disposing of
such suit, &c.

When any such suit, appeal or proceeding comes before any such presiding officer, he shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

The superior Court shall thereupon dispose of the case in the manner prescribed by section twenty-five of the Code of Civil Procedure.

In the event of an appeal being preferred to a Judicial Commissioner from a judgment or order passed by him in any other capacity, or in which he has any personal interest, he shall report the fact to the Local Government, which may transfer the case to the High Court of the North-Western Provinces for disposal, or appoint an officer to be an Additional Judicial Commissioner for the disposal of the case.

CHAPTER IV.

SPECIAL JURISDICTION.

Power to
invest with
Small Cause
Court juris-
diction

24. The Local Government may invest, within such local limits as it from time to time fixes, any District Judge, Additional Judge or Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of five hundred rupees, and any Munsif with similar jurisdiction up to the amount of fifty rupees; and may, whenever it thinks fit, withdraw such jurisdiction from the Judge or Munsif so invested.

25. The

25. The Judicial Commissioner may from time to time, by order, authorize any District Judge to transfer to a Subordinate Judge or Munsif under the control of such District Judge any of the proceedings next hereinafter mentioned, or any class of such proceedings specified in such order, and then pending, or thereafter instituted, before such District Judge.

Power to transfer to Subordinate Judge or Munsif certain proceedings pending before District Judge.

The proceedings herein referred to are the following (that is to say) :—

(1) Proceedings under Act XI. of 1858 (*for making better provision for the care of the persons and property of minors in the Presidency of Fort William in Bengal*), or Act IX. of 1861 (*to amend the law relating to minors*).

(2) Applications for permission to sue or appeal as a pauper.

(3) Applications for certificates under Act XXVII of 1860 (*for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*).

The District Judge may withdraw any proceedings so transferred, and may either dispose of them himself, or, with the sanction of the Judicial Commissioner, transfer them to any other Subordinate Judge or Munsif under his control.

26. Subject to the provisions of the last clause of section twenty-five all proceedings transferred under that section shall be disposed of by the Subordinate Judge or Munsif (as the case may be) according to the rules prescribed for the guidance of District Judges in like cases:

Disposal of proceedings so transferred

Provided that an appeal from the order of the Subordinate Judge or Munsif in such cases shall lie to the District Judge.

An appeal from his order thereon shall lie to the Judicial Commissioner, if an appeal from the decision of the District Judge in such proceedings is allowed by the law in force for the time being.

27. For the purposes of the Indian Divorce Act, the Judicial Commissioner shall, throughout the said territories

Jurisdiction under Divorce Act.

territories to which this Act applies, be deemed to be the Commissioner of the Division.

CHAPTER V.

MISCONDUCT OF OFFICERS.

Suspension and removal of Judicial Commissioner.

28. The Judicial Commissioner may, with the previous sanction of the Governor General in Council, be suspended or removed by the Local Government.

Suspension or removal of subordinate judicial officers by Local Government.

29. Any District Judge, Additional Judge, Subordinate Judge or Munsif may be suspended or removed by the Local Government.

Suspension of Subordinate Judge or Munsif by Judicial Commissioner.

30. The Judicial Commissioner may, whenever he sees urgent necessity for so doing, suspend any Subordinate Judge or Munsif under his control.

Whenever the Judicial Commissioner exercises this power, he shall forthwith report to the Local Government the circumstances of the suspension, and the Local Government shall make such order thereon as it thinks fit.

Suspension of Munsif by District Judge.

31. Any District Judge may, whenever he sees urgent necessity for so doing, suspend any Munsif under his control.

Whenever the District Judge suspends any such Munsif, he shall forthwith send to the Local Government, through the Judicial Commissioner, a full report of the case, with the evidence (if any); and the Local Government shall make such order thereon as it thinks fit.

Removal, &c., of ministerial officers of Judicial Commissioner's Court.

32. The Judicial Commissioner may remove or suspend the ministerial officers of his Court, or fine them in an amount not exceeding one month's salary.

Removal, &c., of ministerial officers of Judges' Courts.

33. The Judicial Commissioner, and, subject only to the general control of the Judicial Commissioner, the Judges of the District Courts, may remove or suspend the ministerial officers of such Courts, or fine them in an amount not exceeding one month's salary.

34. Any

34. Any Subordinate Judge or Munsif may, by order, remove or suspend from office, or fine in an amount not exceeding one month's salary, any ministerial officer of his Court who is guilty of any misconduct or neglect in the performance of the duties of his office. And the District Judge, subject only to the general control of the Judicial Commissioner, may, on appeal or otherwise, reverse or modify every such order.

Removal, &c.,
of ministerial
officers of
Subordinate
Judges' and
Munsifs'
Courts.

The Judicial Commissioner (or the District Judge within whose jurisdiction such Court is situate) may by order suspend or remove any such ministerial officer.

35. Any fine imposed under this chapter shall, if the order imposing it so directs, be recovered from the offender's salary.

Recovery of
fines.

CHAPTER VI.

MISCELLANEOUS.

36. The Judicial Commissioner may from time to time, with the previous sanction of the Local Government, make rules—

Petition-
writers.

(a) declaring what persons shall be permitted to practise as petition-writers in the Civil Courts of Oudh; and

(b) regulating the conduct of persons so practising.

Whoever breaks any rule made under this section shall be punished with fine which may extend to fifty rupees.

37. When a mortgagee shall, under or by virtue of a mortgage executed before the thirteenth of February, 1844, have obtained possession of any land comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring a suit to redeem the mortgage of such land, any subsequent acknowledgment of the title or right to redeem of the mortgagor, or of any person claiming through him, notwithstanding.

Bar of redemption-suits when mortgage executed before 13th February, 1844.

Nothing

Redemption-suits not barred where fixed term for redemption had not expired before 13th February, 1856.

Nothing herein contained shall be taken to bar a suit for redemption in any case where, by the instrument of mortgage, a term was fixed within which the property comprised therein might be redeemed, and such term had not expired before the thirteenth day of February, 1856: provided that, if any such term had expired before that day, the suit shall be barred, whatever may have been the date on which the instrument was executed.

Vacations.

38. Subject to such orders as may from time to time be issued by the Governor General in Council, and to the approval of the Local Government, the Judicial Commissioner shall prepare a list of days to be observed in each year as close holidays in the Court subordinate to him.

Such list shall be published in the local official Gazette, and the said days shall be observed accordingly.

Pending proceedings.

39. All cases pending before the Judicial Commissioner under the Oudh Laws Act, 1876, section twenty-eight, on the first day of August, 1879, shall be disposed of as if this Act had not been passed,

and all other proceedings pending on that day shall be heard and disposed of by the Courts established under this Act that would have had jurisdiction if they had been in existence when such proceedings were instituted.

For the purposes of this section, all appeals pending on the said day shall—

(a) if preferred from the decrees, orders or decisions of Commissioners,—be deemed to be appeals from District Judges;

(b) if preferred from the decrees, orders or decisions of Deputy Commissioners or the Civil Judge of Lucknow or of Assistant Commissioners, or Extra-Assistant Commissioners acting in exercise of enhanced powers conferred under the Oudh Civil Courts Act, 1871, section eleven, clause two,—be deemed to be appeals from Subordinate Judges; and

(c) if

(c) if preferred from the decrees or orders of Assistant Commissioners or Extra-Assistant Commissioners otherwise acting or of Tahsildárs,—be deemed to be appeals from Munsifs.

SCHEDULE.

ACTS REPEALED.

(See section 3.)

Number and year.	Title of Act.	Extent of repeal.
Act X of 1870	The Land Acquisition Act, 1870.	So much of section 3 as declares the Commissioner of a Division to be a principal Civil Court of original jurisdiction in Oudh.
Act XXXII of 1871	The Oudh Civil Courts Act, 1871.	The whole Act, except section 40.
Act XVIII of 1876	The Oudh Laws Act, 1876.	Sections 21, 28 and 43.
Act XIV of 1878	An Act to assimilate certain powers of the Local Governments of the North-Western Provinces and Oudh.	Section 3.

ACT No. XIV OF 1879.

PASSD BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received the assent of the Governor General on the 5th September, 1879)

An Act for the regulation and control of Hackney-carriages in certain Municipalities and Cantonments.

WHEREAS it is expedient to provide for the regulation and control of hackney-carriages in certain municipalities and cantonments, It is hereby enacted as follows. —

1. This Act may be called “The Hackney-carriage Act, 1879”

and it shall come into force at once,

but nothing herein contained shall affect any power conferred by any law relating to municipalities, or any rule made in exercise of any such power.

2. In this Act —

“Hackney-carriage” means any wheeled vehicle drawn by animals and used for the conveyance of passengers which is kept, or offered, or plying, for hire, and

“Committee” means a Municipal Committee, or a body of Municipal Commissioners, constituted under the provisions of any enactment for the time being in force.

3. The Lieutenant-Governors of the North-Western Provinces and the Panjab, and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Assam, Ajmer and Coorg, may, by notification in the official Gazette, apply this Act to any municipality in the territories administered by them respectively.

[*Price two annas.*]

When

Preamble,

Short title.

Commencement

Saving

Interpretation-clause

Application of Act to municipalities

Power of committees to make rules.

When this Act has been so applied to any municipality, the committee of such municipality may, from time to time, make rules for the regulation and control of hackney-carriages within the limits of such municipality, in the manner in which, under the law for the time being in force, it makes rules or bye-laws for the regulation and control of other matters within such limits.

Confirmation and publication of rules.

Every rule made under this section shall, when confirmed by the Local Government and published for such time and in such manner as the Local Government may, from time to time, prescribe, have the force of law :

Power of Local Government to rescind rules.

Provided that the Local Government may, at any time, rescind any such rule.

Power to make rules for cantonments.

4. The Local Government of any of the said territories may from time to time, subject to the control of the Governor General in Council, make rules for the regulation and control of hackney-carriages in any military cantonment situated in the territory administered by it ; and

the Governor General in Council may, from time to time, make rules for the regulation and control of hackney-carriages in any place in India, but not in British India, in which British troops are cantoned.

All rules made under this section when published for such time and in such manner as the authority making the same may, from time to time, prescribe, shall have the force of law.

Power to extend operation of rules beyond limits of municipality or cantonment.

5. The authority making any rules under this Act may extend their operation to any railway-station, or specified part of a road, not more than six miles from the local limits of the municipality or cantonment concerned :

Provided that such extension shall be made, in the case of a municipality, with the sanction of the Local Government, and, in the case of a cantonment situate in British India, subject to the control of the Governor General in Council.

When

When any rules have been made under this Act for any municipality, the Local Government may, subject to the control of the Governor General in Council, extend the operation of such rules to any cantonment the boundary of which is not more than six miles distant from the boundary of such municipality.

6. The rules to be made under section three or section four may, among other matters,—

What rules under sections 3 and 4 may provide for.

(a) direct that no hackney-carriage, or no hackney-carriage of a particular description, shall be let to hire, or taken to ply, or offered for hire, except under a license granted in that behalf;

(b) direct that no person shall act as driver of a hackney-carriage except under a license granted in that behalf;

(c) provide for the issue of the licenses referred to in clauses (a) and (b), prescribe the conditions (if any) on which such licenses shall be granted, and fix the fees (if any) to be paid therefor;

(d) regulate the description of animals, harness and other things to be used with licensed carriages, and the condition in which such carriages, and the animals, harness and other things used therewith, shall be kept, and the lights (if any) to be carried after sunset and before sunrise;

(e) provide for the inspection of the premises on which any such carriages, animals, harness and other things are kept;

(f) fix the time for which such licenses shall continue in force, and the events (if any) upon which within such time they shall be subject to revocation or suspension;

(g) provide for the numbering of such carriages;

(h) determine the times at which, and the circumstances under which, any person keeping a hackney-carriage shall be bound to let or refuse to let such carriage to any person requiring the same;

(i) appoint places as stands for hackney-carriages and prohibit such carriages waiting for hire except at such places;

(j) limit the rates or fares, as well for time as distance, which may be demanded for the hire of any hackney-carriage; and prescribe the minimum speed at which such carriages when hired by time shall be driven;

(k) limit the number of persons, and the weight of property, which may be conveyed by any such carriage;

(l) require the owner or person in charge of any such carriage to keep a printed list of fares in English and such other language as may be prescribed affixed inside such carriage in such place as may be determined by the rules, and prohibit the destruction or defacement of such list;

(m) require drivers to wear a numbered badge or ticket, and to produce their licenses when required by a Magistrate or other person, authorized by the rules in this behalf, and prohibit the transfer or lending of such licenses and badges, and

(n) provide for the deposit of property found in such carriages, and the payment of a fee by the owner of such property on the delivery thereof to him.

Penalty for
breach of
rules.

7. Any person breaking any rule made under this Act shall be punished with fine which may extend to fifty rupees.

Disposal of
fees and pay-
ment of ex-
penses.

8. The amount of any fees received and the amount of any expenses incurred in giving effect to this Act shall in any municipality be credited and debited respectively to the municipal fund, and in any cantonment where there is a cantonment-fund, to such fund.

Power of
Magistrate
to decide dis-
putes regard-
ing fares.

9. If any dispute arises between the hirer of any hackney-carriage and the owner or driver of such carriage as to the amount of the fare payable by such hirer under any rule made under this Act, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined by any Magistrate or bench of Magistrates within the local limits of whose jurisdiction such dispute has arisen, and such Magistrate or bench may, besides determining

determining the amount so in dispute, direct that either party shall pay to the other such sum as compensation for loss of time as such Magistrate or bench thinks fit.

Any sum determined to be due or directed to be paid under this section shall be recoverable as if it were a fine.

The decision of any Magistrate or bench in any case under this section shall be final.

When any such case is heard by a bench, any difference of opinion arising between the members of such bench shall be settled in the same manner as differences of opinion arising between such members in the trial of criminal cases.

10. If at the time any dispute mentioned in section nine arises, any Magistrate or bench of Magistrates having jurisdiction in respect of such dispute is sitting within the local limits to which the rules apply, the hirer of the carriage may require the driver thereof to take him in the same to the Court of such Magistrate or bench for the purpose of making an application under that section.

In case of dispute, hirer may require driver to take him to Court.

Any driver neglecting or refusing to comply with such requisition shall be punished with imprisonment for a term which may extend to one month, or with fine not exceeding fifty rupees, or with both.

ACT No. XVI OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 30th September, 1879).

An Act to restrict the transport of Salt by Sea.

WHEREAS it is expedient to restrict the transport of salt by sea in manner hereinafter appearing; It is hereby enacted as follows:—

Preamble.

1. This Act may be called "The Transport of Salt Act, 1879":

Short title.

It extends to the western coast of British India north of Cochin and to the sea within a distance of a marine league from such coast;

Local extent.

and it shall come into force at once.

Commencement.

2. When any salt is carried by sea in any vessel other than a vessel of the burden of three hundred tons and upwards, the owner and master of such vessel shall each be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

Penalties for carrying salt in certain vessels.

3. Nothing in section two applies to

Exceptions.

(a) salt covered by a permit granted under section twenty-eight or section thirty-one of the Act of the Governor of Bombay in Council No. VII of 1873, or by a *rawána* granted under Madras Regulation I of 1805, section eleven, clause third;

(b) salt covered by a pass granted by any officer whom the Governor of Bombay in Council may appoint in this behalf;

(c) such amount of salt carried on board any vessel for consumption by her crew or by the passengers or animals (if any) on board as the Governor

of

Price one anna and six pies].

of Bombay in Council may, from time to time, exempt from the operation of section two.

Power of
stoppage,
search and
arrest

4. When any officer empowered by the Governor of Bombay in Council, whether by name or office, to act under this section has reason to believe, from personal knowledge or from information taken down in writing, that any salt is being carried, or has within the twenty-four hours next before the requirement first hereinafter mentioned been carried, in any vessel so as to render the owner or master of such vessel liable to the penalties prescribed by section two, he may require such vessel to be brought-to, and thereupon may

(a) enter and search the same;

(b) require the master of such vessel to produce any documents in his possession relating to such vessel or the cargo thereof;

(c) seize such vessel if the said officer has reason to believe it liable to confiscation under this Act, and cause it to be brought with its crew and cargo into any port in British India; and

(d) where salt is found on board such vessel, search and arrest without a warrant any person on board the same who such officer has reason to believe is punishable under section two.

Penalties for
resisting
officer

5. Any master of a vessel refusing or neglecting to bring-to or to produce his papers when required to do so by an officer acting under section four,

and any person obstructing any such officer in the performance of his duty,

may be arrested by such officer without a warrant, and shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

Confiscation
of vessel and
cargo.

6. Every vessel in which salt is carried so as to render the owner or master of such vessel liable to the penalties prescribed by section two, the cargo on board such vessel and all salt in respect of which an offence under this Act has been committed shall be liable to confiscation.

The

The confiscation of any vessel under this section shall include her tackle, apparel and furniture.

Confiscations under this section may be adjudged by the Chief Customs Authority, or by such other officer as the Local Government may, from time to time, appoint in this behalf.

Whenever any Customs-officer is satisfied that any article is liable to confiscation under this section, he may seize such article, and shall at once report the seizure to his superior officer for the information of the Chief Customs Authority or such other officer as aforesaid, and such authority or officer may, if satisfied on such report, or after making such enquiry as it or he thinks fit, that the article so seized is liable to confiscation, either declare it to be confiscated or impose a fine in lieu thereof not exceeding the value of the article.

7. For the purpose of the adjudication of penalties under section two or section five, every offence thereunder may be deemed to have been committed within the limits of the jurisdiction of the Magistrate of any place where the offender is found, or to which, if arrested under section four or section five, he may be brought. Jurisdiction.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, exempt the carriage of salt within any local limits or in any class of vessels from the operation of this Act, and, by like notification, again subject such carriage to the operation of this Act. Power to exempt from operation of Act.

THE LEGAL PRACTITIONERS ACT, 1879.

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ACT No. XVIII OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 29th October, 1879.)

An Act to consolidate and amend the law relating
to Legal Practitioners.

WHEREAS it is expedient to consolidate and amend the law relating to Legal Practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Panjáb, Oudh, the Central Provinces and Assam, and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit; It is hereby enacted as follows:—

Preamble.

CHAPTER I.—*Preliminary.*

1. This Act may be called “The Legal Practitioners Act, 1879”: and shall come into force on the first day of January, 1880.

Short title.
Commencement.

This section and section two extend to the whole of British India.

Local extent.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces and Assam. But any other Local Government may from time to time, by notification in the official Gazette, extend all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

2. On

Repeal of enactments.

2. On and from the first day of January, 1880, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein.

Saving of rules, &c.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any enactment hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act.

References to repealed enactments.

All references made to any enactment hereby repealed, in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Judge":

"Judge" means the presiding judicial officer in every civil and criminal Court, by whatever title he is designated :

"Subordinate Court":

"Subordinate Court" means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX of 1850 or Act No. XI of 1865 :

"Revenue-office":

"Revenue-office" includes all Courts (other than civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents :

"Legal practitioner."

"Legal practitioner" means an Advocate, Vakíl or Attorney of any High Court, a Pleader, Mukhtár or Revenue-agent.

CHAPTER II.—*Of Advocates, Vakíls and Attorneys.*

Advocates and Vakíls.

4. Every person now or hereafter entered as an Advocate or Vakíl on the roll of any High Court under the Letters Patent constituting such Court, or as an Advocate on the roll of the Chief Court of the Panjáb, shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all Revenue-offices situate within the local limits of the appellate jurisdiction of such Court,

Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by Pleaders or Revenue-agents; and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, in any High Court on whose roll he is not entered, and in any Revenue-office :

Provided that no such Vakil shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency-town.

5. Every person now or hereafter entered as an Attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all Revenue-offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered and in any Revenue-office.

Attorneys of
High Court.

The High Court of the Province in which an Attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of an Attorney so practising.

CHAPTER III.—*Of Pleaders and Mukhtárs.*

6. The High Court may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(a) the qualifications, admission and certificates of proper persons to be Pleaders of the subordinate

Power to
make rules
as to qualifi-
cation, &c.,
of Pleaders
and Mukh-

Courts,

Courts, and of the Revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court ;

(b) the qualifications, admission and certificates of proper persons to be Mukhtárs of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court ;

(c) the fees to be paid for the examination and admission of such persons ; and

(d) the suspension and dismissal of such Pleaders and Mukhtárs.

**Publication
of rules.**

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law : Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government.

**Certificates
to Pleaders
and Mukh-
társ.**

7. On the admission, under section six, of any person as a Pleader or Mukhtár, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person authorizing him to practise up to the end of the current year in the Courts, and, in the case of a Pleader, also the Revenue-offices, specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such Pleader or Mukhtár shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

8. Every Pleader holding a certificate issued under section seven may apply to be enrolled in any Court or Revenue-office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted ; and, subject to such rules consistent with this Act as the High Court or the Chief Controlling Revenue-Authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly ; and thereupon he may appear, plead and act in such Court or office and in any Court or Revenue-office subordinate thereto.

Pleaders on enrolment may practise in Courts and Revenue-offices.

9. Every Mukhtár holding a certificate issued under section seven may apply to be enrolled in any civil or criminal Court mentioned therein and situate within the same limits ; and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly ; and thereupon he may practise as a Mukhtár in any such civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure) appear, plead and act in any such criminal Court and any Court subordinate thereto.

Mukhtárs on enrolment may practise in Courts.

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a Pleader or Mukhtár in any Court not established by Royal Charter unless he holds a certificate issued under section seven and has been enrolled in such Court or in some Court to which it is subordinate :

No person to practise as Pleader or Mukhtár unless qualified.

Provided that persons who have been admitted as Revenue-agents before the first day of January, 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section nine in any Munsif's Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act No. VIII of 1869 (*to amend the procedure in suits*

Revenue-agents may appear, plead and act in Munsifs' Courts in suits under Bengal Act VIII of 1869.

between

between Landlord and Tenant) or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

Power to declare functions of Mukhtárs

11. Notwithstanding anything contained in the Code of Civil Procedure, the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of Mukhtárs practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

Suspension and dismissal of Pleaders and Mukhtárs convicted of criminal offence.
Suspension and dismissal of Pleaders and Mukhtárs guilty of unprofessional conduct.

12. The High Court may suspend or dismiss any Pleader or Mukhtár holding a certificate issued under section seven who is convicted of any criminal offence implying a defect of character which unfits him to be a Pleader or Mukhtár, as the case may be.

13. The High Court may also, after such enquiry as it thinks fit, suspend or dismiss

any Pleader holding a certificate as aforesaid who takes instructions in any case except from the party on whose behalf he is retained, or a private servant of such party, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure, or

any Pleader or Mukhtár holding a certificate as aforesaid who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

Procedure when charge of unprofessional conduct is brought in subordinate Court or Revenue-office.

14. If any such Pleader or Mukhtár practising in any subordinate Court or in any Revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the Pleader or Mukhtár at least fifteen days before the day so appointed.

On such day or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall

shall receive and record all evidence properly produced in support of the charge, or by the Pleader or Mukhtár, and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the Pleader or Mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss the Pleader or Mukhtár.

Any District Judge, or with his sanction any Judge subordinate to him, any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue-authority not inferior to a Collector, or with the Collector's sanction any Revenue-officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any Pleader or Mukhtár charged before him or it under this section.

Suspension
pending
investigation.

Every report made to the High Court under this section shall

(a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

(b) when made by a Magistrate subordinate to the Magistrate of the District, be made through the Magistrate of the District and the Sessions Judge;

(c) when made by the Magistrate of the District, be made through the Sessions Judge;

(d) when made by any Revenue-officer subordinate to the Chief Controlling Revenue-Authority, be made through such Revenue-authorities as the Chief Controlling Revenue-Authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue-authority through whom or which it is made.

15. The High Court, in any case in which a Pleader or Mukhtár has been acquitted under section fourteen otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit.

Power to call
for record
in case of
acquittal
under section
14.

16. Notwithstanding

Power to
make rules
for Mukhtárs
on appellate
side of High
Court.

16. Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure, section 37, clause (a), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(a) the qualifications and admission of proper persons to be Mukhtárs practising on the appellate side of such Court ;

(b) the fees to be paid for the examination and admission of such persons ;

(c) the security which they may be required to give for their honesty and good conduct ;

(d) the suspension and dismissal of such Mukhtárs ; and

(e) declaring what shall be deemed to be their functions, powers and duties ;

and may prescribe and impose fines for the infringement of such rules not exceeding in any case five hundred rupees ; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.—*Of Revenue-agents.*

Power to
make rules
as to
qualifica-
tions, &c.,
of Revenue-
agents.

17. The Chief Controlling Revenue-Authority may, from time to time, make rules consistent with this Act as to the following matters (namely) :—

(a) the qualifications, admission and certificates of proper persons to be Revenue-agents ;

(b) the fees to be paid for the examination and admission of such persons ;

(c) the suspension and dismissal of such Revenue-agents ; and

(d) declaring what shall be deemed to be their functions, powers and duties.

Publication
of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

18. On

18. On the admission of any person as a Revenue-agent under section seventeen, the Chief Controlling Revenue-Authority shall cause a certificate, signed by such officer as such Authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such Revenue-offices as may be specified therein.

*Certificates
to Revenue-
agents.*

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue-Authority, or by any other officer authorized by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such Revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue-Authority.

19. Every Revenue-agent holding a certificate issued under section eighteen may apply to be enrolled in any Revenue-office mentioned therein and situate within the limits of the territory under the Chief Controlling Revenue-Authority; and, subject to such rules as the Chief Controlling Revenue-Authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a Revenue-agent in such office and in any Revenue-office subordinate thereto.

*Enrolment
of Revenue-
agent.*

20. Except as provided by this Act or any other enactment for the time being in force, no person, other than a Pleader duly qualified under the provisions hereinbefore contained, shall practise as a Revenue-agent in any Revenue-office, unless he holds a certificate issued under section eighteen and has been enrolled in such office or some other office to which it is subordinate :

*No person to
act as agent
in Revenue-
offices unless
qualified.*

Provided

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue-Authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any Revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the Authority or officer granting the same.

**Dismissal
of Revenue-
agent con-
victed of
criminal of-
fence.**

21. The Chief Controlling Revenue-Authority may suspend or dismiss any Revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a Revenue-agent.

**Dismissal
of Revenue-
agent guilty
of unprofes-
sional con-
duct.**

22. The Chief Controlling Revenue-Authority may also, after making such enquiry as it thinks fit, suspend or dismiss any Revenue-agent holding a certificate issued under this Act who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or for any other reasonable cause.

**Procedure
when Reve-
nue-agent
is so charged
in subordi-
nate office.**

23. If any Revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue-Authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue-Authority;
and

and such Authority shall proceed to acquit, suspend or dismiss him.

Any Revenue-officer not inferior to a Collector, and, with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue-Authority, suspend from practice any Revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

24. The Chief Controlling Revenue-Authority, in any case in which a Revenue-agent has been acquitted under section twenty-three otherwise than by an order of the Chief Controlling Revenue-Authority, may call for the record and pass such order thereon as seems fit.

Power to
Chief Con-
trolling Re-
venue-
Authority to
call for record.

CHAPTER V.—*Of Certificates.*

25. Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed :

Fee for certi-
ficates.

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed.

26. When any Pleader, Mukhtár or Revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue-Authority (as the case may be) orders him to deliver the same.

Dismissed
practitioners
to surrender
certificates.

CHAPTER VI.—*Of the Remuneration of Pleaders, Mukhtárs and Revenue-agents.*

27. The High Court shall, from time to time, fix
and

High Court
and Chief

Controlling Revenue-Authority to fix fees on civil and revenue-proceedings.

and regulate the fees payable by any party in respect of the fees of his adversary's Advocate, Pleader, Vakîl, Mukhtâr or Attorney upon all proceedings (a) on the appellate side of such Court, (b) in the case of a High Court not established by Royal Charter, on its original side, and (c) in subordinate Courts.

The Chief Controlling Revenue-Authority shall, from time to time, fix and regulate the fees payable upon all proceedings in the Revenue-offices by any party in respect of the fees of his adversary's Advocate, Pleader, Vakîl, Attorney, Mukhtâr or Revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette.

Exception as to agents mentioned in section 20. Agreements with clients.

Nothing in this section applies to the agents mentioned in the proviso to section twenty.

28. No agreement entered into by any Pleader, Mukhtâr or Revenue-agent with any person retaining or employing him, respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges or disbursements in respect of business done or to be done by such Pleader, Mukhtâr or Revenue-agent shall be valid unless it is made in writing signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court or in some Court in which some portion of the business in respect of which it has been executed has been or is to be done.

Power to modify or cancel agreements.

29. Where a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable thereunder or order it to be cancelled, and the costs, fees, charges and disbursements in respect of the business done to be ascertained in the same manner as if no such agreement had been made.

Agreements to exclude further claims.

30. Such an agreement shall exclude any further claim of the Pleader, Mukhtâr or Revenue-agent beyond the terms of the agreement with respect to any services, fees, charges or disbursements in relation to the conduct and completion of the business in respect of which the agreement is made, except such services

services, fees, charges or disbursements, if any, as are expressly excepted by the agreement.

31. A provision in any such agreement that the Pleader, Mukhtár or Revenue-agent shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such Pleader, Mukhtár or Revenue-agent, shall be wholly void.

Reservation
of responsi-
bility for
negligence.

CHAPTER VII.—*Penalties.*

32. Any person who practises in any Court or Revenue-office in contravention of the provisions of section ten or section twenty shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

On persons
illegally
practising as
Pleaders,
Mukhtárs or
Revenue-
agents.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as Pleader, Mukhtár or Revenue-agent whilst he has been contravening the provisions of either of such sections.

33. Any Pleader, Mukhtár or Revenue-agent failing to deliver up his certificate as required by section twenty-six shall be liable, by order of the Court, Authority or officer to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

On suspended
or dismissed
Pleader, &c.,
failing to
deliver cer-
tificate.

34. Any Pleader, Mukhtár or Revenue-agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a Pleader, Mukhtár or Revenue-agent in any Court or Revenue-office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and, in default of payment, to impris-

On suspended
or dismissed
practitioner
practising
during
suspension
or after
dismissal.

onment

onment in the civil jail for a term which may extend to six months.

Revision of
fines.

35. Every order under section thirty-two, thirty-three or thirty-four shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue-Authority where the order has been passed by an officer subordinate to such Authority.

Penalty for
receiving
or giving
commission

36. Whoever commits any of the following offences :—

(a) solicits or receives from any legal practitioner any gratification in consideration of procuring or having procured his employment in any legal business ;

(b) reties any gratification out of remuneration paid or delivered or agreed to be paid or delivered to any legal practitioner for such employment ;

(c) being a legal practitioner gives or consents to the retention of any gratification for procuring or having procured the employment in any legal business of himself or any other legal practitioner,

shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.—*Miscellaneous.*

Local Gov-
ernment to
appoint ex-
aminers.

37. To facilitate the ascertainment of the qualifications mentioned in sections six and seventeen respectively, the Local Government shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

Exemption of
High Court
practitioners
from certain
parts of Act

38. Except as provided by sections four, five, sixteen, twenty-seven, thirty-two and thirty-six, nothing in this Act applies to Advocates, Vakils and Attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted,

constituted, or to Mukhtárs practising in such Court, or to Advocates enrolled by the Chief Court of the Panjáb.

39. When any person who holds a certificate as a Mukhtár under section seven and a certificate as a Revenue-agent under section eighteen is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other

Suspension or dismissal of person holding Mukhtár and Revenue-agent's certificates.

40. Notwithstanding anything hereinbefore contained, no Pleader, Mukhtár or Revenue-agent shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him.

Pleaders, &c., not to be suspended or dismissed without being heard.

41. In the Panjáb Courts Act, 1877, after section forty-one, the following shall be inserted (that is to say):—

Advocates of Panjáb Chief Court.

“12. The Chief Court may, from time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission of proper persons to be Advocates of such Court.

“Subject to such rules, the Chief Court may admit and enrol such and so many Advocates as it thinks fit; and such Advocates shall be entitled to appear for the suitors of such Court, and to plead or to act, or to plead and act, for such suitors according as such Court may by its rules determine, and subject to such rules.

“The Chief Court may dismiss any Advocate so enrolled or suspend him from practice:

“Provided that no such Advocate shall be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the Chief Court.”

FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2).

Number and date of enactments.	Title.	Extent of repeal.
Act XX of 1865 ...	To amend the law relating to Pleaders and Mukhtárs.	The whole.
Act XXIX of 1865...	To amend the Pleaders, Mukhtárs and Revenue-Agents Act, 1865.	So much as has not been repealed.
Act IX of 1866 ...	To extend to the Sadr Court of the North-Western Provinces certain provisions of "The Pleaders, Mukhtárs and Revenue-Agents Act, 1865," and of Act No. XXIX of 1865.	The whole.
Act IV of 1876 ...	To authorize Revenue-Agents to practise in certain suits in the Munsifs' Courts of the Lower Provinces of Bengal.	The whole.
Act XVII of 1877...	The Panjáb Courts Act, 1877 ...	Sections forty-two, forty three, forty-four and forty-five

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(See section 25).

I.

For a certificate authorizing the holder to practise as a Pleader—

(a) In the High Court and any subordinate Court—rupees fifty :

(b) In any Court of Small Causes in a Presidency-town—rupees twenty-five :

(c) In all other subordinate Courts—rupees twenty-five :

(d) In

(*d*) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildárs, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees fifteen :

(*e*) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

II.

For a certificate authorizing the holder to practise as a Mukhtár—

(*f*) In the High Court and any subordinate Court—rupees twenty-five :

(*g*) In any Court of Small Causes in a Presidency-town—rupees fifteen :

(*h*) In all other subordinate Courts—rupees fifteen :

(*i*) In the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildárs, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees ten :

(*j*) In the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

III.

For a certificate authorizing the holder to practise as a Revenue-agent—

(*k*) In the office of the Chief Controlling Revenue-Authority and in any Revenue-office subordinate to such Authority—rupees fifteen :

(*l*) In the office of a Commissioner and in any Revenue-office subordinate to a Commissioner—rupees ten :

(*m*) In the office of a Collector and in any Revenue-office subordinate to a Collector—rupees five.

ACT No. XIX of 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL

(Received the assent of the Governor General on the 20th October, 1879)

An Act to amend the law in force in Thánás Raipur and Khattra.

WHEREAS the territory comprised in the tháná of Raipur (including the independent Police outpost of Simlapal) and the tháná of Khattra has been transferred from the district of Mámbhum to the district of Bankúra; Preamble.

And whereas the said territory, when included in the district of Mámbhum, formed portion of the Chutiá Nágpur Division, which is a Scheduled district under Act No. XIV of 1874 (the Scheduled Districts Act, 1874);

And whereas it is expedient that the law in force in the said territory should be the same as the law in force in the district of Bankúra; It is hereby enacted as follows:—

1. This Act may be called “The Raipur and Khattra Laws Act, 1879”; Short title.

and it shall come into force at once.

2. All enactments which on the first day of October, 1879, were in force in the district of Bankúra and not in the said territory shall be deemed to have come into force in the said territory on that day; and all enactments which on that day were in force in the said territory and not in the district of Bankúra shall be deemed to have been repealed on and from that day in the said territory. Commencement.
Laws of Bankúra to apply.
Other laws repealed.

3. All proceedings commenced before any authority in the said territory before the said first day of Pending proceedings.
October,

[Price one anna and three pies.]

Raipur and Khattra Laws. [ACT XIX, 1879.]

October, 1879, and still pending shall be disposed of by such authority as the Local Government may direct and, save as aforesaid, shall be carried on as if this Act had not been passed.

Territory to
cease to be a
Scheduled
district

4. The said territory shall be deemed to have ceased to be a Scheduled district on the said first day of October, 1879.

ACT No. XX OF 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 14th
November, 1879).*

An Act to provide for the better prevention of
Glanders and Farcy among Horses.

WHEREAS it is expedient to provide for the better Preamble.
prevention of glanders and farcy among horses ;
It is hereby enacted as follows :—

1. This Act may be called “The Glanders and Short title
Farcy Act, 1879” :

It extends to the whole of British India, except Local extent.
the territories respectively administered by the Gov-
ernor of Fort St. George in Council, the Governor of
Bombay in Council and the Lieutenant-Governor of
Bengal ;

and it shall come into force at once. Commence-
ment.

2. In this Act, unless there is something repug- Interpreta-
tion-clause.
nant in the subject or context,—

“horse” includes also ponies, asses, mules and “horse” :
jennets :

“diseased” means affected with glanders or farcy. “diseased.”

3. The Local Government may, by notification in Local Gov-
ernment may
apply the
Act.
the official Gazette, apply this Act, or any provision of
this Act, to any local area, to be specified in such noti-
fication, within the territories administered by it, and
may in like manner amend or cancel any such noti-
fication.

4. When this Act has been so applied to any local Local Gov-
ernment to
appoint
Inspectors.
area, the Local Government may, by notification in
the official Gazette, appoint either by name or by

virtue

[*Price one anna and nine pies*].

virtue of their office such persons as it thinks fit to be Inspectors under this Act and to exercise and perform, within the whole of such local area or such portions thereof as it may from time to time prescribe, the powers conferred and the duties imposed by this Act on such officers.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Every person so appointed shall be deemed a public servant within the meaning of the Indian Penal Code.

Inspector's
power to
seize horse.

5. Within the local limits for which he is so appointed, any such Inspector may seize any horse which he has reason to believe, from personal knowledge or from information given by any person and taken down in writing, is diseased.

Power of
entry and
search given
to Inspectors.

6. For the purpose of making such seizure, such Inspector may, subject to such rules as the Local Government may from time to time make in this behalf, enter and search any field, building or other place where he has reason to believe that any such horse is to be found.

Horse to be
examined by
Veterinary
surgeon.

7. On any such seizure, the Inspector shall cause the horse so seized to be examined as soon as possible by such Veterinary Surgeon as the Local Government may from time to time appoint in this behalf.

Horse to be
destroyed if
found dis-
eased;
otherwise
restored.

8. If such Surgeon certifies in writing that such horse is diseased, the Inspector shall cause the same to be immediately destroyed; but if such Surgeon does not so certify, the Inspector shall at once deliver the same to the person entitled to the possession thereof.

When horse
diseased,
place where
it has been
to be disin-
fected, &c.

9. When any diseased horse has been in any building, shed or other enclosed place, or in any open lines, the Inspector may issue a notice to the owner of such building, shed, place or lines, or the person in charge thereof, directing him to have the same disinfected, and the internal fittings thereof, or such other things found therein or near thereto as the

Local

Local Government may from time to time by rule prescribe, destroyed.

On the failure or neglect of such owner or other person to comply with such notice within a reasonable time, the Inspector shall cause such building, shed, place or lines to be disinfected, and such fittings or other things to be destroyed, and the expense (if any) thereby incurred may be recovered from such owner or other person as if it were a fine.

10. The owner or any person in charge of a diseased horse shall give immediate information of such horse being diseased to the Inspector or to some officer of Police.

Owner or person in charge of diseased horse to give notice.

11. No person in charge of any horse which has been in the same field, building or place or in contact with a diseased horse shall move such horse, except in good faith for the purpose of preventing infection or under a license to be granted by the Inspector and subject to the conditions of such license.

Prohibition against removal, without license, of horse which has been with diseased horse.

12. Any Inspector who, without reasonable ground of suspicion, enters or searches any field, building or other place, or vexatiously and unnecessarily seizes or detains any horse on the pretence that it is diseased, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Vexatious entries, searches and seizures.

No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed.

13. Any person who refuses or neglects to comply with any notice issued by the Inspector under section nine, or who moves any horse in contravention of section eleven, shall be punished with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Penalty for refusing to comply with notice under section 9; or moving horse contrary to section 11.

14. The Local Government may, from time to time, make rules, consistent with this Act,—

Power to make rules.

(a) for regulating entries and searches by Inspectors under this Act;

(b) for

(b) for regulating the destruction of horses certified under section eight to be diseased, and the disposal of the carcasses of such horses ;

(c) for regulating the disinfecting of buildings and places in which diseased horses have been, and for prescribing what things found therein or near thereto shall be destroyed ;

(d) for regulating the grant of licenses under section eleven, and the conditions on which such licenses shall be granted ; and

(e) generally for carrying out the purposes of this Act.

All such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Any person breaking a rule made under this section shall be punished with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Validation
of destruction
of diseased
horses pre-
vious to pass-
ing of this
Act.

15. All diseased horses destroyed under the orders of the Governor General in Council or the Local Government in the districts of Ráwalpindí and Pesháwar previous to the passing of this Act shall be deemed to have been destroyed in accordance with law.

THE FOREIGN JURISDICTION AND EXTRADITION ACT, 1879.

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[Price three annas and three pies.]

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ACT No. XXI of 1879.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 14th November, 1879).

An Act to provide for the trial of offences committed in places beyond British India and for the Extradition of Criminals.

WHEREAS by treaty, capitulation, agreement, Preamble
grant, usage, sufferance and other lawful means the Governor General of India in Council has power and jurisdiction within divers places beyond the limits of British India; and whereas such power and jurisdiction have, from time to time, been delegated to Political Agents and others acting under the authority of the Governor General in Council; and whereas doubts having arisen how far the exercise of such power and jurisdiction, and the delegation thereof, were controlled by and dependent on the laws of British India, the Foreign Jurisdiction and Extradition Act, 1872, was passed to remove such doubts, and also to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals; and whereas it is expedient to repeal that Act and re-enact it with the amendments hereinafter appearing; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called “The Foreign Jurisdiction and Extradition Act, 1879”:

It extends to the whole of British India;

Short title.
Extent.

to
3

to all Native Indian subjects of Her Majesty beyond the limits of British India; and

to all European British subjects within the dominions of Princes and States in India in alliance with Her Majesty;

Commence-
ment.

and it shall come into force on the passing thereof.

Saving of
other laws and
of treaties.

But nothing contained in this Act shall affect the provisions of any law or treaty for the time being in force as to the extradition of offenders; and the procedure provided by any such law or treaty shall be followed in every case to which it applies.

Repeal.

2. The Foreign Jurisdiction and Extradition Act, 1872, is repealed; but all existing appointments, delegations, certificates, requisitions and rules made, and all existing notifications, summonses, warrants, orders and directions issued, under that Act shall, in so far as they are consistent herewith, be deemed to have been respectively made and issued hereunder.

Interpreta-
tion-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

"Political
Agent."

"Political Agent" means and includes—

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India:

(2) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India; and

"European
British sub-
ject."

"European British subject" means a European British subject as defined in the Code of Criminal Procedure.

CHAPTER II.

POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

Exercise of
powers of
Governor

4. The Governor General in Council may exercise any power or jurisdiction which he for the time being has

has within any country or place beyond the limits of British India, and may delegate the same to any servant of the British Indian Government, in such manner and to such extent as the Governor General in Council from time to time thinks fit.

General in places beyond British India, and delegation thereof.

5. A notification in the *Gazette of India* of the exercise by the Governor General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof of the truth of the matters stated in the notification.

Notification of exercise or delegation of such powers.

6. The Governor General in Council may appoint any European British subject, either by name or by virtue of his office, in any such country or place to be a Justice of the Peace; and every such Justice of the Peace shall have in proceedings against European British subjects, or persons accused of having committed offences conjointly with such subjects, all the powers conferred by the Code of Criminal Procedure on Magistrates of the first class who are Justices of the Peace and European British subjects.

Appointment, powers and jurisdiction of Justices of the Peace.

The Governor General in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial.

7. All Political Agents and all Justices of the Peace appointed before the twenty-fifth day of April, 1872, by the Governor General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay, in or for any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have and to have had jurisdiction, under the provisions of this Act.

Confirmation of existing Political Agents and Justices.

8. The law relating to offences and to criminal procedure for the time being in force in British India shall, subject as to procedure to such modifications as the Governor General in Council from time to time directs, extend—

Extension of criminal law of British India to British subjects out of British India.

(a) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty; and

(b) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

CHAPTER III.

INQUIRIES IN BRITISH INDIA INTO CRIMES COMMITTED BY BRITISH SUBJECTS IN PLACES BEYOND BRITISH INDIA.

Liability of British subjects for offences committed out of British India.

9. When a European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found :

Political Agent to certify fitness of inquiry into charge.

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be such, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge is one which ought to be inquired into in British India :

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar against further proceedings against him under this Act in respect of the same offence at any place beyond the limits of British India.

Power to direct copies of depositions and exhibits to be received in evidence.

10. Whenever any such offence as is referred to in section nine is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the place in which such offence is alleged to have been committed

committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

CHAPTER IV.

EXTRADITION.

11. When an offence has been committed or is supposed to have been committed in any State against the law of such State by a person not being a European British subject, and such person escapes into or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place and to a person to be named in the warrant—

Arrest and removal of persons other than European British subjects escaping into British India.

if such Political Agent thinks that the offence is one which ought to be inquired into in such State ;

and if the act said to have been done would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the schedule hereto annexed, or under any other section of the said Code, or any other law, which may, from time to time, be specified by the Governor General in Council by a notification in the *Gazette of India*.

12. Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be, and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants; and the accused person, when arrested, shall be forwarded to the place and delivered to the officer named in the warrant.

Direction and execution of warrant.

13. Such Political Agent may either dispose of the case himself, or, if he is generally or specially directed to do so by the Governor General in Council, or by the Governor of the Presidency of Fort St. George in Council or by the Governor of the Presidency of Bombay in Council, may give over the person so forwarded, whether he be a Native Indian

Political Agent may himself dispose of case, or make over person to ordinary Courts for trial.

subject

subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed.

Requisitions for extradition by the Executive of any part of British dominions or Foreign power.

14. Whenever a requisition is made to the Governor General in Council or any Local Government by or by the authority of the persons for the time being administering the executive government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor General in Council or such Local Government, as the case may be, may issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been committed within the local limits of his jurisdiction, directing him to inquire into the truth of such accusation.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall inquire into the truth of such accusation, and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section ten shall apply to inquiries held under this section.

Magistrate may in certain cases issue warrant for arrest of person accused of having committed an offence out of British India.

15. Whenever any person accused or suspected of having committed an offence out of British India is within the local limits of the jurisdiction of a Magistrate in British India, and it appears to such Magistrate that the Political Agent for any State could, under the provisions of section eleven, issue a warrant for the arrest of such person, or that the persons for the time being administering the executive government of any part of the dominions of Her Majesty or

the

the territory of any Foreign Prince or State could demand his surrender, such Magistrate may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and such evidence as would, in his opinion, justify the issue of such a warrant if the offence had been committed within the local limits of his jurisdiction.

Any Magistrate issuing a warrant under this section shall, when the offence appears or is alleged to have been committed in a State for which there is a Political Agent, send immediate information of his proceedings to such Agent, and in other cases shall at once report his proceedings to the Local Government.

Magistrate to inform Political Agent or Local Government.

16. No person arrested on a warrant issued by a Magistrate under section fifteen shall be detained more than two months from the date of his arrest, unless within such period the Magistrate receives a warrant under section eleven from the Political Agent for any State for the delivery of such person, or an order with reference to him under section fourteen from the Governor General in Council or Local Government, or such person is in accordance with law delivered up to some Foreign Prince or State.

Person arrested to be released after certain time if not proceeded against.

At any time before the receipt of such a warrant or order the Magistrate, if he thinks fit, may, and the Magistrate if so directed by the Local Government shall, discharge the accused person.

17. The provisions of the Code of Criminal Procedure in respect of bail shall apply in the case of any person arrested under section fifteen in the same manner as if such person were accused of committing in British India the offence with which he is charged.

Bail.

CHAPTER V.

MISCELLANEOUS.

18. The Governor General in Council may, from time to time, make rules to provide for—

Power to make rules.

(1) the confinement, diet and prison-discipline of British subjects, European or Native, imprisoned by Political Agents under this Act ;

(2) the

(2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them; and

(3) generally to carry out the purposes of this Act.

Execution of
commissions
issued by
Foreign
Criminal
Courts.

19. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in the territory of any Foreign Prince or State in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, chapter XXV; and the provisions of that chapter shall be construed as if the term "suit" included a proceeding against a criminal:

Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

THE SCHEDULE.

SECTIONS OF THE INDIAN PENAL CODE REFERRED TO IN SECTION ELEVEN.

Sections 206, 208 and 224; sections 230 to 263, both inclusive; sections 299 to 304, both inclusive; sections 307, 310 and 311; sections 312 to 317, both inclusive; sections 323 to 333, both inclusive; sections 347 and 348; sections 360 to 373, both inclusive; sections 375 to 377, both inclusive; sections 378 to 414, both inclusive; sections 435 to 440, both inclusive; sections 443 to 446, both inclusive; sections 464 to 468, both inclusive; sections 471 to 477, both inclusive.

ACT No. I OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 9th January, 1880).

An Act to confer certain powers on Religious Societies.

WHEREAS it is expedient to simplify the manner Preamble.
in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies; It is hereby enacted as follows:—

1. This Act may be called “The Religious Societies Act, 1880:” Short title.

It shall come into force at once; and

shall extend to the whole of British India;

Commence-
ment.
Local extent.

but nothing herein contained shall apply to any Hindús, Muhammadans or Buddhists, or to any persons whom the Governor General in Council may, from time to time, by notification in the *Gazette of India*, exclude from the operation of this Act.

2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property, Appointment of new trustee in cases not otherwise provided for.

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or

any

any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds of the members of such body actually present at the meeting at which the appointment is made.

Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting.

3. Every appointment of new trustees under section two shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made.

Such memorandum shall be in the form set forth in the schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act, 1877, section seventeen.

Property to vest in new trustees without conveyance.

4. When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding any thing contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or, if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees.

Saving of existing modes of appointment and conveyance.

5. Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required.

6. Any

• 6. Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and if not, then as such body at such meeting may determine :

Provision for
dissolution of
societies and
adjustment
of their
affairs.

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate; and the Court shall make such order in the matter as it deems fit.

• 7. If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

Upon a dis-
solution no
member to
receive profit.

8. Nothing in sections six and seven shall be deemed to affect any provision contained in any instrument for the dissolution of such body, or for the payment or distribution of such property.

Saving of
certain pro-
visions of
instruments.

9. When any question arises, either in connection with the matters hereinbefore referred to, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such question. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit.

Questions
may be
submitted to
High Court.

Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree.

The costs of every application under this section shall be in the discretion of the Court.

THE SCHEDULE.

(*See section 3.*)

Memorandum of the appointment of new trustees of the (*describe the church, chapel or other buildings and property*) situate at a meeting duly convened and held for that purpose (*in the vestry of the said*) on the day of 18 , *A. B.* of Chairman.

Names and descriptions of all the trustees on the constitution or last appointment of trustees, made the day of

(*here insert the same*).

Names and descriptions of all the trustees in whom the said (*chapel and property*) now become legally vested.

First.—Old continuing trustees:—

(*here insert the same*).

Second.—New trustees now chosen and appointed:—

(*here insert the same*).

Dated this day of 18

Signed by the said *A. B.* as Chairman of the said Meeting, at and in the presence of the said Meeting on the day and year aforesaid in the presence of—

A. B.,
Chairman of the
said Meeting.

C. D.

E. F.

THE BURMA DISTRICT CESSSES AND RURAL POLICE ACT, 1880.

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[Price three annas and three pies.]

Burma District Cesses and Rural Police. [ACT II

Miscellaneous.

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1880.]

ACT No. II OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 21th
January, 1880.)*

An Act to amend the law relating to District Cesses
and Rural Police in British Burma.

WHEREAS it is expedient to make better provision Preamble.
in British Burma for the maintenance of Rural
Police and of a local postal service, the construction of
works of public utility, sanitary improvement, and the
promotion of education ;

and whereas it is also expedient to declare and
amend the law relating to Rural Police in the said
Province ; It is hereby enacted as follows :—

Preliminary.

1. This Act may be called “The Burma District Short title.
Cesses and Rural Police Act, 1880” :

and it shall come into force on such date as the Commence-
Chief Commissioner of British Burma may, by noti- ment.
fication in the local Gazette, direct.

It extends to all the territories for the time being Local exten-
administered by the said Chief Commissioner :

Provided that the said Chief Commissioner may,
from time to time, by notification in the local Gazette,
exempt any portion of the said territories from its
operation and cancel such exemption :

Provided also that nothing herein contained applies
to any town to which the British Burma Municipal
Act, 1874, for the time being extends.

2. In

Burma District Cesses and Rural Police. [ACT II

Interpreta-
tion-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

“land-revenue” means revenue assessed upon land under the provisions of the Burma Land and Revenue Act, 1876 : and

“Revenue-officer” means any person appointed a Revenue-officer under the same Act.

Repeal.

3. The following portions of the said Burma Land and Revenue Act, 1876, are repealed (namely) : sections 31 and 32, in sections 37 and 46 the words “five per cent. cess,” and the word “cess” wherever it occurs in the said Act ; but all cesses imposed under that Act shall be deemed to have been imposed under this Act.

Cesses.

Cess on land

4. On all lands assessed to land-revenue there shall be levied in addition thereto an annual cess of ten per cent. on the amount of such revenue.

Saving of
existing
house-tax.

5. In every town, village or hamlet in which at the date on which this Act comes into force a house-tax is levied, such tax shall continue to be levied.

Cess on
houses.

6. The Chief Commissioner may from time to time, by notification in the local Gazette, direct that in any specified town, village or hamlet there shall be levied from the occupier of each house an annual cess, to be fixed in manner hereinafter provided, but which shall in no case exceed two rupees :

Provided that such cess shall not be levied—

(a) in any place in which the house-tax referred to in section five is levied, or

(b) in respect of any monastery, pagoda, sacred building, Government-building, public rest-house or school :

Provided also that in respect of any house occupied by a person bound to pay cess under section four no larger amount shall be levied under this section than will, together with the cess so payable by such person, amount to two rupees.

“House”

“House” in this section means any building used as a human dwelling or for the custody of property.

7. The Chief Commissioner may from time to time, by notification in the official Gazette, direct that any tax or cess levied in any place under section five or section six shall cease, or that any person or class of persons shall be exempted from the whole or any specified part of such tax or cess.

Power to abolish or exempt from cess or tax.

8. Subject to the other provisions of this Act and to any rules made hereunder and for the time being in force, the Deputy Commissioner of the district may from time to time—

Powers of Deputy Commissioner.

• (a) declare what shall for the purposes of this Act be held to be a house ;

(b) fix the amount of cess to be levied in respect of each house ;

(c) remit such cess in whole or in part.

9. A separate account shall be kept for each district of all cesses and house-tax levied under this Act in such district ; and such cesses and tax shall be appropriated in each year in that district, in such proportions as the Chief Commissioner may from time to time direct, to all or any of the following local objects (namely) :—

Purposes to which funds are to be applied.

(a) the maintenance of the Rural Police appointed under this Act ;

(b) the maintenance of a local postal service ;

(c) the construction and maintenance of district-roads and other communications, and the improvement of river-channels ;

(d) other works of public utility ;

(e) sanitary improvement ; and

(f) the promotion of education :

• Provided that the Chief Commissioner may, on the thirty-first day of March in any year, transfer the whole or part of any balance then standing under either of the heads (b) or (c) in the account of any district

district to the corresponding head in the account of any other district in the same division.

Time and
mode of pay-
ment of
cesses, &c.

10. All cesses and house-tax levied under this Act shall be payable for the year of assessment of land-revenue as fixed under the Burma Land and Revenue Act, 1876, section 41, and shall be payable at the place at which and to the person to whom the land-revenue is from time to time payable, or at such other place and to such other person as the Chief Commissioner may direct.

Sums assessed on the amount of land-revenue shall fall due on the date on which the land-revenue falls due.

Sums assessed on houses shall fall due on such dates as the Chief Commissioner may from time to time in that behalf direct.

Realization
of cesses, &c.

11. All sums assessed under this Act on the amount of any land-revenue may be recovered as if they were part of such revenue.

All other sums payable under this Act may be recovered in the manner prescribed in sections 44 and 45 of the Burma Land and Revenue Act, 1876.

Rural Police.

Rural Police.

12. The Rural Police shall be of two classes—

(a) headmen of hamlets or groups of hamlets, or of villages or towns, or sections of villages or towns, hereinafter called headmen ;

(b) headmen of circuits, hereinafter called gongs.

Appointment
of Rural
Police.

13. Subject to the rules made under this Act and for the time being in force, the Deputy Commissioner of the district shall have power to appoint, suspend and remove headmen and gongs, and to fix the limits of the beats of headmen and the circuits of gongs :

Provided that all kyaydangyees and yazawut gongs holding office as such in any local areas on the date on which this Act comes into force shall be deemed to be respectively headmen and gongs appointed

appointed under this Act, and such local areas shall be deemed to have been fixed as their beats and circuits respectively under this Act.

14. Every headman shall perform the following duties (namely) :— Duties of headmen.

(a) he shall give immediate information to the gOUNG of the circuit in which his beat is situated, or the officer in charge of the police-station appointed for his beat, of all disputes within his beat which may come to his knowledge and which are likely to lead to any riot or serious affray :

(b) he shall report to the gOUNG or Police-officer aforesaid the arrival in, or in the neighbourhood of, his beat of suspicious characters and of persons who have been convicted under the Indian Penal Code, chapter XII (*Of offences relating to coin and Government-stamps*) and chapter XVII (*Of offences against property*), and the movements of all bad characters within his beat :

(c) he shall report to the gOUNG or Police-officer aforesaid all breaches of laws and rules relating to excise and opium which occur within his beat and come to his knowledge :

(d) he shall to the best of his ability supply any local information which any Magistrate or Revenue-officer or officer of police may require, and promptly execute all lawful orders issued to him by or by authority of the Deputy Commissioner :

(e) he shall attend the Revenue-officer of the circle, so long as such officer is within his beat for the purpose of assessing or collecting land-revenue, cesses or taxes, and shall give him all available information regarding the cultivation of land and other matters relating to the revenue :

(f) he shall, in accordance with such rules as may from time to time be made by the Chief Commissioner, keep up a register of all births, marriages and deaths within his beat, and collect and register

any

Burma District Cesses and Rural Police. [ACT II

any other vital statistics which may be prescribed by such rules :

(g) he shall afford all assistance in his power to Government-officers, and, on the order of the Deputy Commissioner, to other persons, in procuring food, labour, carriage and other requisites of travel.

Duties of
goungs.

15. The duties of a goung in respect of his circuit shall, *mutatis mutandis*, be the same as those of a headman in respect of his beat.

Power of
headmen and
goungs to
demand help.

16. For the purpose of preventing the commission of any offence or arresting any offenders whom he is authorized to arrest, any headman or goung may require any male person between the ages of eighteen and sixty within his beat or circuit at the time to assist him in preventing the commission of such offence or in making such arrest, and in guarding and escorting the person arrested.

Obligation to
render help.

Every person as aforesaid shall, in the absence of reasonable excuse, the burden of proving which shall lie upon him, be bound to comply with any requisition made to him under this section.

Powers and
duties of
Police-officers
may be con-
ferred and
imposed on
headmen and
goungs.

17. The Chief Commissioner may from time to time, by notification in the local Gazette, make rules consistent with this Act—

(a) conferring upon headmen and goungs any powers, protection or privileges which may be exercised or enjoyed by a Police-officer under any enactment for the time being in force ;

(b) imposing upon headmen and goungs any duties imposed on a Police-officer by any enactment for the time being in force ; and

(c) regulating the exercise, enjoyment and discharge of such powers, protection, privileges and duties by such headmen and goungs.

Penalties for
breach of
duty.

18. Every headman or goung who—

(a) is guilty of cowardice or of wilful misconduct in his office, or of neglect of duty ; or

(b) except

(b) except with the permission of the Deputy Commissioner, withdraws from the duties of his office without having given to the Deputy Commissioner at least two months' notice of his intention to withdraw from such duties; or

(c) offers any unnecessary personal violence to any person in his custody,

may, in addition to any other penalty to which he may be liable, be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or both.

No complaint against a headman or gong of any act or omission punishable under this section shall be entertained by any Court unless the prosecution is instituted by order of or under authority from the Deputy Commissioner. Bar of prosecution.

19. No prosecution against any person for anything purporting to be done under section fourteen, fifteen or sixteen, or under any rule made in exercise of the powers conferred by section seventeen, shall be commenced after the expiration of three months next after the act complained of has been committed. Limitation of prosecution.

No suit shall be brought for anything so purporting to be done until the expiration of one month next after notice in writing has been delivered at the residence of such person, or at the office of the Deputy Commissioner of the district in which the act was done, stating the cause of suit and the name and place of abode of the plaintiff. Notice of suit to be given.

If any person to whom any such notice of suit is given shall before such suit is brought tender sufficient amends to the plaintiff, such plaintiff shall not recover. Previous tender of amends.

20. No prosecution shall be instituted against any headman or gong for any act done by him in such capacity, under the authority of a warrant issued by a Magistrate, notwithstanding any defect of jurisdiction in such Magistrate. Protection to officers acting under warrant.

Miscellaneous.

Miscellaneous.

Help in cases
of dacoity and
robbery.

21. If within or in the immediate neighbourhood of any town, village or hamlet a dacoity or a robbery is committed or attempted, or dacoits or robbers are harboured, sheltered or assisted, and if the inhabitants of such town, village or hamlet without reasonable excuse fail to render active assistance in preventing the offence or in arresting and securing the offenders, the Chief Commissioner may, after such enquiry as he deems necessary, impose upon such town, village or hamlet, or upon any section thereof, a fine, to be assessed upon the inhabitants according to his judgment of their respective means and of the circumstances of the case.

Powers and
duties of re-
venue-officers.

22. For the purposes of this Act, the Chief Commissioner may from time to time, by notification in the local Gazette, invest any Revenue-officer with any of the powers, and impose on him any of the duties, with which he may invest him or which he may impose upon him under the Burma Land and Revenue Act, 1876, and the rules framed under it.

Control of
Commissioner
and Chief
Commissioner.

23. All proceedings of any Deputy Commissioner or Revenue-officer under this Act shall be subject to control, revision and alteration by the Commissioner to whom he is subordinate and by the Chief Commissioner.

Power to
make rules.

24. The Chief Commissioner may from time to time make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement.

All such rules and all other rules made under this Act shall be published in the local Gazette, and shall thereupon have the force of law.

THE CANTONMENTS ACT, 1880.

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1880].

ACT N^o. III OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 30th
January 1880).*

An Act to amend the law relating to Cantonments.

WHEREAS it is expedient to amend the law relating to cantonments; It is hereby enacted as follows :— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called “The Cantonments Act, 1880.” Short title.

This section, section two and section twenty-four apply to the whole of British India. The remaining portions of this Act extend to the whole of British India except the territories respectively administered by the Governor of Fort St. George in Council and the Governor of Bombay in Council. The Governor of Fort St. George in Council or the Governor of Bombay in Council may, by notification in the official Gazette, extend any such portion to any place under his administration; and, from the date on which any such portion is so extended to any place such of the enactments for the time being in force in such place as are in any way inconsistent with, or repugnant to, such portion shall cease to have effect in such place. Local extent.

Enactments inconsistent with this Act in Madras and Bombay cantonments.

2. Act No. XXII of 1864 (*to provide for the administration of Military Cantonments*) is hereby repealed; but all orders, declarations, rules and regulations made, powers conferred, and Courts established under that Act, shall be deemed to be respectively made, conferred and established under this Act. Repeal of Act XXII of 1864.

All

References to
Act XXII of
1864.

All references to the said Act No. XXII of 1864 in enactments passed subsequently thereto shall be read as if made to this Act.

CHAPTER II.

CRIMINAL JURISDICTION.

Cantonment
Magistrate.

3. Every person invested by the Local Government, under the Code of Criminal Procedure, with the powers of a Magistrate of the first class within the limits of any cantonment, shall be styled the Cantonment Magistrate, and shall be deemed a Magistrate in charge of a division of a district within the meaning, and for the purposes, of the said Code.

Assistant
Cantonment
Magistrate.

4. Every person invested by the Local Government, under the provisions of the said Code, with the powers of a Magistrate of the second or third class within the limits of any cantonment, shall be styled the Assistant Cantonment Magistrate.

CHAPTER III.

CIVIL JURISDICTION.

Small Cause
jurisdiction
of Canton-
ment Magis-
trate.

5. Whenever the Local Government establishes within the limits of any cantonment a Court of Small Causes under Act No. XI of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil jurisdiction of the High Courts of Judicature*), the Cantonment Magistrate, if there be a Cantonment Magistrate, shall be the Judge of the Court so established.

The Local Government shall declare and may from time to time alter the pecuniary limit of the jurisdiction of every such Court, but such limit shall in no case exceed five hundred rupees.

Small Cause
jurisdiction
of Assistant
Cantonment
Magistrate.

6. The Local Government may invest any Assistant Cantonment Magistrate with the powers of a Judge of a Court of Small Causes to try suits instituted in any Court referred to in section five; provided

•that

that no Assistant Cantonment Magistrate shall have jurisdiction to try suits for an amount exceeding fifty rupees.

7. All the provisions of the said Act shall be applicable to every such Court, and to all suits instituted in any such Court, except as is herein otherwise provided.

Act XI of 1835 to apply to all Small Cause Courts in cantonments.

8. Whenever a Court of Small Causes is established in any cantonment, the jurisdiction exercised in such cantonment by any officer under Act No. III of 1859 (*for conferring Civil Jurisdiction in certain cases upon Cantonment Joint Magistrates*) shall cease and so much of any Act as authorises the commanding-officers of stations or cantonments to convene military courts of requests for the trial of actions of debt and other personal actions, shall cease to have effect within the limits of such cantonment.

Military courts of requests.

CHAPTER IV.

POLICE.

9. The Police-force employed in any cantonment shall be deemed to be part of the general Police-force under the Local Government in whose territories such cantonment is situate, within the meaning of Act No. V of 1861 (*for the Regulation of Police*), section two, and all the provisions of the said Act shall be applicable to such force.

Act V of 1861 applicable to Police employed in cantonments.

The administration of the Police within the limits of any cantonment in which there is a Cantonment Magistrate shall be vested in the District Superintendent subject to the general control and direction of the commanding-officer of such cantonment.

Administration of Police within cantonments.

10. The Local Government may extend section thirty-four of the said Act No. V of 1861 to any cantonment situate in the territories administered by such Government.

Extension of section 34, Act V of 1861, to cantonments.

11. The commanding-officer of a cantonment may send any process requiring service or execution by any means not immediately at his disposal to the chief Police-officer in the cantonment for service or execu-

Service of process sent by commanding-officer of cantonment.

tion

tion through the cantonment-police; and the said chief Police-officer shall serve or execute such process in the same manner as if it had been issued by the Cantonment Magistrate, and subject to the same rules.

Power to
extend Act
XX of 1856
to canton-
ments.

12. The Local Government may, by notification in the official Gazette, extend the provisions of Act No. XX of 1856 (*to make better provision for the appointment and maintenance of Police Chaukidárs in Cities, Towns, Stations, Suburbs and Bázárs in the Presidency of Fort William in Bengal*), to any cantonment to which a Cantonment Magistrate may be appointed; and the Cantonment Magistrate of any cantonment to which the said Act is so extended may exercise all the powers vested in a Magistrate by that Act subject only to the control of the Magistrate of the District and the Local Government.

Whenever any such Cantonment Magistrate is absent, or when his office is temporarily vacant, the Magistrate of the District shall, during such absence or until the Local Government fills up the vacancy, carry out the provisions of the same Act when so extended as aforesaid.

Power to
order division
of canton-
ments, &c.

13. The Local Government may order that any cantonment to which the provisions of the said Act No. XX of 1856 are extended shall be divided into any number of cantonment-divisions, and may determine the nature of the tax to be levied in each such division according to section ten of the same Act.

CHAPTER V.

SPIRITUOUS LIQUORS.

Unauthorized
sale of spirit-
uous liquor.

14. If within any cantonment, or within any limits around such cantonment prescribed by the Local Government, any person not amenable to the Articles of War, or any sutler or camp-follower, knowingly barter, sells or supplies, or offers or attempts to barter, sell or supply, any spirituous liquor, wine or intoxicating drug to, or for the use of, any European soldier, or to or for the use of any European or Eur-
sian

sian being a camp-follower or a soldier's wife, without a written license from the Officer Commanding or from some person authorized by the Officer Commanding to grant such license, the person so bartering, selling or supplying, or offering or attempting to barter, sell or supply, such liquor, wine or drug, shall be liable on conviction to fine which may extend to one hundred rupees, or to imprisonment for a term which may extend to three months, or, in lieu of such fine or imprisonment, to the punishment of whipping, as prescribed for offences under section two of Act No. VI of 1864 (*to authorize the punishment of whipping in certain cases*), subject to all the provisions of that Act.

15. If any person convicted of an offence under section fourteen is again convicted of an offence under that section, any spirituous liquor, wine or intoxicating drug within such cantonment or limits which, at the time of the commission of such subsequent offence, belongs to him, or is in his possession shall, without further proof, be deemed to be in his possession for the purpose of being supplied to European soldiers contrary to the provisions of this Act.

Presumption
in case of
second con-
viction.

16. If within such cantonment or limits any camp-follower or military pensioner, or the wife or the widow of any soldier, camp-follower or military pensioner, removes, conveys or has, in his or her possession, any quantity of spirituous liquor or wine exceeding one ser or quart, without a permit to be signed by the officer in command, or such other officer as may be appointed by him to grant permits under this Act, every such person shall be liable upon conviction to fine which may extend to fifty rupees, and for any subsequent offence to fine which may extend to one hundred rupees, or to imprisonment for a term which may extend to three months: provided that nothing in this section contained shall apply to any liquor brought into a cantonment for the private use of any commissioned officer.

Penalty on
certain per-
sons having
in possession
within can-
tonments
more than
certain quan-
tity of spirit-
uous liquor,
&c., without
permit.

17. If any person subject to the provisions of this Act is found committing any offence contrary to section fourteen or section sixteen, any Police-officer

Arrest of
offenders un-
der section 14
or 16, and
seizure of

may

spirituous
liquor, &c.

may immediately without warrant arrest such person, and also seize any spirituous liquor, wine or intoxicating drug, together with any vessel containing the same, and anything used for the purpose of removing, conveying or concealing the same, which may be found in his possession, and shall thereupon without delay take such person, together with the things so seized, before the Cantonment Magistrate or other officer having jurisdiction to punish the offender.

Confiscation
of such li-
quor, &c.

18. In case of a conviction for any offence under section fourteen or section sixteen, the Cantonment Magistrate or other officer may adjudge any liquor, wine or intoxicating drug in respect of which the accused is convicted, and any other spirituous liquor, wine or intoxicating drug found in his possession at the time of committing the offence, and any vessel containing the same, together with anything used for the purpose of conveying, removing or concealing the same or any part thereof, to be confiscated; and such Magistrate or officer may order the whole or any part or parts of any fine imposed under this Act to be paid, as soon as the same is realized, to the person upon whose information such conviction takes place, or to the officer who has apprehended the offender or seized any of the goods adjudged to be confiscated.

Detention
of property
seized.

19. Anything seized under section seventeen in respect of which any person is charged with an offence under this Act may be ordered to be detained until the person in whose possession the same has been seized is convicted or acquitted of the offence charged.

Disposal
of property
seized.

If such person is acquitted, anything so seized shall be restored; if he is convicted, such of the things only, if any, as are not adjudged by the Cantonment Magistrate or other officer to be confiscated shall be restored: the remainder shall be dealt with as confiscated.

Saving of
articles sold
or supplied
for medicinal
purposes.

20. The foregoing sections shall not apply to the sale or supply of any article for medicinal purposes by recognized medical practitioners, chemists or druggists.

CHAPTER VI

MUNICIPAL TAXATION

21. The Local Government may from time to time, with the previous sanction of the Governor General in Council, by notification in the official Gazette, impose in any cantonment any tax which, under any enactment in force at the date of such notification, can be imposed in any municipality within the territories administered by such Government, and may, with the like sanction and by a like notification, abolish any tax so imposed

General
power of
taxation.

22. When any tax is leviable in a cantonment under section twenty-one, the Local Government may, from time to time, by notification in the official Gazette, apply or adapt to such cantonment the provisions of any enactment or rules in force at the date of such notification for the assessment and recovery of any tax in any municipality within the territories administered by such Government.

Power to
provide for
assessment
and colle-
ction of taxes.

23. The proceeds of all taxes levied in any cantonment under section twenty-one shall, after defraying therefrom the cost of assessing and collecting the same, be applied in such cantonment, under the directions of the Local Government, to the maintenance of the Police-force and the carrying out of measures under the rules made under section twenty-five

Application
of proceeds
of taxes

24. Notwithstanding anything contained in any enactment for the time being in force the Governor General in Council may, by an order in writing, prohibit the levy of the whole or any part of any tax in any cantonment, or exempt any person by name or in virtue of his office, or any class of persons, from the operation of any such tax, and may by a like order, rescind any such prohibition or exemption.

Power to
prohibit
taxation in
cantonments

CHAPTER VII.

SUBSIDIARY RULES.

25. The Local Government may from time to time make rules consistent with this Act to provide within the

Power to
make confer-
ment-rules.

the limits of any cantonment for the matters herein-after mentioned.

rules may
be general or
special.

The rules made under this section may be general for all cantonments in the territories administered by the Local Government making the same, or special for any one or more of such cantonments, according as the Local Government directs.

rules to be
confirmed
by Governor
General in
Council.

26. No rule made under section twenty-five shall have effect until the same has been confirmed by the Governor General in Council. A copy of every such rule when so confirmed, in English and in the vernacular language chiefly in use, shall be hung up in some conspicuous part of the office of the Cantonment Magistrate, or in such other place as the Local Government or the commanding-officer directs.

for what
alters rules
provide.

27. The rules made under section twenty-five may provide for all or any of the following matters :—

1st—regulating, in cases in which the land within the limits of the cantonment is the property of Government, and the occupation and use of which by private persons is only permissive, the conditions under which such occupation or use shall be allowed, and under which the Government may resume possession of such land, and under which compensation shall be given to persons occupying or using the land so resumed ;

2nd—maintaining proper registers of immoveable property within the limits of the cantonment, and providing for the registration of transfers of such property ;

3rd—regulating the manner in which houses within the limits of the cantonment shall be claimable for purchase or hire, when necessary, for the accommodation of military officers ;

4th—regulating the management and expenditure of any funds made available by law or by the Government for the purpose of public improvements within the limits of the cantonment, or for carrying out any rules made under section twenty-five ; and the appointment of the necessary servants and establishments ;

5th—the definition and prohibition of public nuisances ;

6th—the

6th—the maintenance generally of the cantonment in a proper sanitary condition; the prevention and cure of disease; the management and regulation of the public roads, of conservancy and drainage; the regulation and inspection of public and private necessities, urinals, cess-pools, drains, and all places in which filth or rubbish is deposited, of slaughter-houses, public markets, burial and burning grounds and of all offensive or dangerous trades and occupations;

7th—inspecting and controlling brothels and preventing the spread of venereal disease;

8th—the supervision and regulation of public wells, tanks, springs or other sources from which water is or may be made available for public use;

9th—the execution and promotion of works of public utility and convenience;

10th—the registration of deaths, and the making and recording observations and facts important for the public health and interest;

11th—the imposition of penalties on persons convicted of the breach of any rule made under section twenty-five, and declaring what persons shall make the preliminary inquiry into or take cognizance of any breach of such rules and the manner in which the investigation shall be conducted: provided that no penalty so imposed shall exceed a fine of fifty rupees, or imprisonment for eight days.

28. Breaches of any rule made under section twenty-five shall be triable by the Cantonment Magistrate when there is such an officer: but the Local Government may invest any Assistant Cantonment Magistrate, or any other person, with powers to try such breaches, and may authorize such person to exercise such powers independently of the Cantonment Magistrate.

Trial of
breaches of
rules.

There shall be no appeal in any case tried under this section; but every person trying any such case shall, for the purposes of Chapter XXII of the Code of Criminal Procedure, be deemed to be subordinate to the High Court, the Court of Session and the Magistrate of the District.

29. In

**Fine how
levied.**

29. In every case in which an offender is sentenced to a fine for the breach of any rule made under section twenty-five, the amount may in case of non-payment be levied by distress and sale of any moveable property of the offender which may be found within the limits of the cantonment.

**Imprison-
ment in case
fine not
levied.**

If no such property sufficient for the payment of the fine can be found, the offender shall be liable to simple imprisonment for any term which may extend to one month.

**Prosecutions,
&c., under
other enact-
ments.**

30. Nothing in this Act, nor in any rule made under section twenty-five, shall prevent any person from being prosecuted under any other enactment for any offence punishable under this Act, or from being liable under any other enactment to any other or higher penalty than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

**Extension of
rules as to
brothels and
venereal
disease.**

31. Whenever it appears necessary for the protection of the health of the troops in any cantonment, the Governor General in Council may extend to any place outside the limits of such cantonment, and in the vicinity thereof, all or any of the rules made for such cantonment for inspecting and controlling brothels and preventing the spread of venereal disease and make any additional rules consistent with this Act for providing for the same matters, and may define the limits around such cantonment within which such rules or additional rules shall be in force.

**Penalties for
breach of
rules in
extended
limits.**

32. When such rules, with any additional rules made as aforesaid, are extended under section thirty-one to any place outside the limits of such cantonment, the Governor General in Council may provide, in the manner described in clause eleven of section twenty-seven, for the imposition of penalties for the breach of such rules and for prescribing the manner in which, and the persons by whom, breaches of such rules shall be inquired into or be cognizable.

**Effect of
cantonment-
rules on
enactments.**

33. Whenever, in any cantonment, rules have been made under section twenty-five, so much of any enactment as may be held to empower the commanding-officer

ing-officer to make local regulations regarding matters other than military shall cease to have any effect in such cantonment, and all local regulations for any cantonment which may have been made before the promulgation of the rules for such cantonment made under section twenty-five, shall cease to have any effect.

previously
in force.

34. Nothing in the foregoing sections shall be deemed to affect the jurisdiction or military authority of Courts-martial or of commanding-officers of cantonments or of regiments, corps or detachments under any Articles of War, or the provisions of any Statute for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty in the East Indies; and the Cantonment Magistrate shall exercise no jurisdiction in respect of such offences.

Saving of
jurisdiction
of Courts-
martial, &c.

Provided that, when a Cantonment Magistrate or other officer not being the commanding-officer has been invested by the Local Government with power within the limits of any cantonment to dispose of cases under any rule made under section twenty-five, the commanding-officer shall not exercise the powers described in clause (c) of Part III of the Indian Articles of War in respect of any case arising under such rule when such rules have been passed for such cantonment under section twenty-five and penalties have been laid down for their infringement.

The said rules shall be held to be the rules mentioned in the said last mentioned clause, and so much of the same clause as declares the penalties which may be inflicted for breach of cantonment-regulations shall cease from that time to have any effect in such cantonment.

35. The Local Government may from time to time prescribe rules for regulating the expenditure, for the general purposes of this Act, of any funds raised under the said Act No. XX of 1856. Such funds may be expended for the purpose of carrying out any measures under any of the rules made under section twenty-five or section thirty-one of this Act, in addition to or in lieu of the purposes described in section thirty-six of the said Act No. XX of 1856.

Power to
prescribe
rules as to
expenditure
of funds
raised under
Act XX of
1856.

ACT No. IV OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 30th January 1880.)

An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding the Extradition of Criminals, and to the twentieth Article of the Treaty between Her Majesty and the King of Portugal and the Algarves.

WHEREAS, by the nineteenth article of the Treaty of Commerce and Extradition between Her Majesty and the King of Portugal and the Algarves, executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, it was provided that the High Contracting Parties should deliver up to each other those persons who, being accused or convicted of crimes committed in the Indian dominions or jurisdiction of the one party, should be found in the Indian dominions or jurisdiction of the other party, and that the circumstances and conditions under which, and the crimes for which, such persons should be delivered up should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed at the earliest date possible after the ratification of the said Treaty, and that such Convention should have the same binding character as the said Treaty, and should continue in force for the same period ;

and whereas, in pursuance of the said article, the Convention

[*Price three annas and nine pies.*]

Convention set forth in the schedule hereto annexed has been executed;

and whereas by the twentieth Article of the said Treaty it was provided that Commissions issued in criminal trials and enquiries by the judicial tribunals of the one party, for the examination of persons resident in the dominions of the other, should be executed according to the provisions of the laws of the dominions where the witness resides;

and whereas it is doubtful whether under the existing law of British India there is authority to give effect to all the provisions of the said Convention and of the said twentieth Article;

It is hereby enacted as follows:—

Provisions of
Convention
to be fol-
lowed.

1. The provisions of the said Convention shall be followed in British India in every case to which they apply.

Procedure.

The procedure prescribed in the Code of Criminal Procedure shall, in so far as it is not inconsistent with the said Convention, be followed in every such case.

Execution of
commissions
issued by
Portuguese
Criminal
Courts.

2. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in Portuguese India in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, chapter XXV; and the provisions of that chapter shall be construed as if the term "suit" included a proceeding against a criminal.

Short title.

3. This Act may be called "The Portuguese Treaty Act, 1880."

THE SCHEDULE.

Whereas by the nineteenth Article of a treaty dated the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and the Algarves, it is provided that the High Contracting Parties engage to deliver up to each other those

persons

persons who, being accused or convicted of crimes committed in the Indian dominions or jurisdiction of the one party, shall be found in the Indian dominions or jurisdiction of the other party; and whereas by the same article it is further provided that the circumstances and conditions under which, and the crimes for which, such persons are to be delivered up, shall form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed at the earliest date possible after the ratification of the said Treaty.

In pursuance of the said article, the undersigned Governors General of British India and Portuguese India, acting respectively on behalf of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and the Algarves (hereinafter called the High Contracting Parties), have agreed that the said persons shall be so delivered up under the circumstances, and subject to the exceptions, hereinafter stated, namely:—

(a) When the crime for which extradition is claimed has been committed beyond the dominions of the party claiming, the requisition shall also be complied with, if the laws of the party applied to authorize a prosecution for such crime when committed beyond his dominions, and if the person claimed is a subject of the party claiming his extradition.

(b) The

(b) The crimes for which the extradition shall be granted are the following :—

BRITISH INDIAN PENAL CODE.		PORTUGUESE PENAL CODE.	
Crime.	Section.	Crime.	Article.
Murder, culpable homicide not amounting to murder, and causing death by rash or negligent act	299 to 304A	Voluntary homicide, including— ...	349
		Parricide	355
		Poisoning	353
		Infanticide	356
		And involuntary homicide caused by negligence	368
Attempt to commit murder or culpable homicide	307, 308, 511	Attempt at homicide	350; 6 to 11
Voluntarily causing hurt or grievous hurt	319 to 333 335 and 338	Wounding, causing contusions or hurts	360 to 367, 369
		Ordinary hurts under Articles 359 and 360, being excepted in the circumstances described in Articles 370, 377, and 378.	
Rape	375 and 376	Rape	394, 395 to 397
Kidnapping, abduction, concealing kidnapped person, slave dealing, or selling minors for immoral purposes ...	380 to 373	Kidnapping and having of minors ...	342 to 344
Immodest assault on a woman ...	354	Immodest assault on a woman ...	391
Causing miscarriage and abortion ...	312 to 316	Abortion	358
Exposure or abandonment of a child ..	317	Exposure or abandonment of a child	343 to 348
Thefts	378 to 382	Thefts	421; 424 to 431
Extortions, robberies, dacoities, attempts to commit robbery and belonging to a gang of thieves	383 to 402	Robbery	432 to 444
Criminal misappropriations and criminal breaches of trust	403 to 409	Theft	313; 422 to 425; 453
Receiving stolen property	410 to 414	Receiving stolen property	463
Cheating	415 to 420	Cheating, false pretences	450 to 452 456
Lurking, house-trespass, house-breaking	443 to 446	House-breaking	380, clause 1
Fraudulent bankruptcy and fraudulent disposition of property	206, 209 421 to 424	Fraudulent bankruptcy and fraudulent disposition of property ...	447 to 449; 455
Dishonest opening of closed receptacle containing property	461 and 462	Dishonest opening or breaking of seals by public servants and others	510 to 512
Being a thug	310, 311	} Association of malefactors	263
Belonging to a band of dacoits or robbers	400, 401		
Aggravated cases of wrongful confinement	344 to 348	Aggravated cases of wrongful confinement	331 to 338
Mischief by fire or explosive substance	435, 436 and 438	Arson	466 to 474

BRITISH INDIAN PENAL CODE.		PORTUGUESE PENAL CODE.	
Crime.	Section.	Crime	Article.
Mischief to a vessel, or after preparation to cause death, hurt, or wrongful restraint	437, 439, 440	Aggravated cases of mischief ...	475 and 481
Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instruments for above purposes	230 to 251	Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instrument for above purposes ...	206 to 214
Counterfeiting or fraudulently using of Government-stamps issued for purposes of revenue	255 to 263 F	Counterfeit or fraudulent using of Government-stamps or stamped paper ...	228 and 229
Forgery and using of forged documents, and making of seals for fraudulent purposes	463 to 468, 470 to 477.	Forgery and using of forged documents, and making of seals for fraudulent purposes ...	215 to 217 ; 229 to 233 ; 230 and 231
Use of false trade-mark or property-mark, and frauds connected with such marks	478 to 480	Use of false trade-mark or property-mark, and frauds connected with such marks ...	230 and 231
Giving or fabricating false evidence to cause a person to be convicted of an offence, and subornation of the same... ..	194 and 195	Giving or fabricating false evidence to cause a person to be convicted of an offence, and subornation of the same ...	238 to 240
Illegal gratification taken by a public servant, or to influence a public servant	161 to 165	Illegal gratification taken by a public servant, or to influence a public servant ...	314 to 323 ; 462
Causing the evidence of the commission of any offence to disappear	201	Causing the evidence of commission of an offence mentioned in this Convention to disappear ...	464
False certificate or declaration made by public servant, or used by any person as evidence	197 to 200	False certificate or declaration made by public servants or used by any person as evidence ...	216 to 218 ; 221 and 222
Escape from lawful custody on accusation or conviction of any crime specified in this Convention	224	Escape from lawful custody on accusation or conviction of any crime specified in this Convention ...	190 to 196
<i>Crimes against other Laws.</i>			
Piracy by law of nations		Piracy	162
Assaults on board a ship on the high seas, with intent to destroy life or to do grievous bodily harm		Voluntary homicide, as above ...	349, 353, 355, 356
		<i>Portuguese Maritime Code.</i>	
Sinking or destroying a vessel at sea, or attempting or conspiring to do so		Loss or destruction of vessel, caused by a person on board ...	42
Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master.		Act of revolt committed by more than third of crew ...	46

The extradition shall also take place for complicity or participation in any of the aforesaid crimes, and for any attempt to commit any such crime, provided such complicity, participation or attempt be punishable by the laws of both the High Contracting Parties.

(c) No British subject by birth or naturalization shall be delivered up by the Government or authorities of British India to the Government or authorities of Portuguese India; and, in like manner, no Portuguese subject by birth or naturalization shall be delivered up by the Government or authorities of Portuguese India to the Government or authorities of British India. Naturalization after the commission of the crime shall not be an obstacle to the extradition.

(d) The Governor General of British India will, from time to time, communicate to the Governor General of Portuguese India a list of Native States which, with the subjects thereof, are entitled to be placed, for the purposes of this Convention, upon the same footing as British India and the subjects of Her Britannic Majesty.

(e) The extradition shall not take place if the person claimed has already been tried and acquitted, or punished, for the same crime for which extradition is asked. If he should be under trial for any other crime, his extradition shall be deferred until the conclusion of the trial; and if the execution of the sentence, if any, would interfere with the extradition, it shall be postponed, in order that the extradition may take place. If upon extradition he be sentenced to other further punishment, the two High Contracting Parties shall arrange that the punishments shall be fulfilled according to priority of date of sentence.

(f) The extradition shall not take place if, after the commission of the crime, or the institution of the prosecution or the conviction thereon, the person claimed shall have acquired exemption from prosecution, or punishment, by lapse of time, according to the laws of the State applied to.

(g) A

(g) A person surrendered shall not be kept in prison or brought to trial, by the party to whom the surrender is made, for any other crime or on account of any other matters than those for which the surrender has been granted. This stipulation is not applicable to crimes committed after the extradition.

(h) If the person whose extradition is claimed by one of the High Contracting Parties shall be also claimed by one or more other Governments, on account of crimes committed in their respective dominions, the following rule shall be observed :—

If he is a subject of the High Contracting Party who claims him, the surrender shall be made to such party. If he is not so, the other High Contracting Party shall have the power of delivering him up to the reclaiming Government which, in the case in question, may appear to the former best entitled to the preference.

(i) The requisition for extradition may be made, on behalf of Her Britannic Majesty, by the Government of British India or by the Government of the Presidency of Bombay; and, on behalf of His Most Faithful Majesty, by the Government of Portuguese India :

Provided that, when the person claimed is accused of any of the above crimes which in British India is not exclusively triable by the High Court or the Court of Session, the requisition may also be made by the Governors of the Portuguese Settlements of Damaun and Diu, for any such crime committed in such Settlements respectively, and may be preferred directly to any District Magistrate or Political Agent within whose local jurisdiction such accused person may be found. Such District Magistrate or Political Agent shall, subject to the exceptions and conditions of this Convention, and unless he deem reference to higher authority to be absolutely necessary, comply with such requisition by delivering up the accused.

In like manner, any District Magistrate or Political Agent

Agent may make requisition to the Government of Portuguese India, or to the Governors of Damaun and Diu respectively, for the extradition of any person found in their jurisdiction who is accused of the commission, within the local jurisdiction of such District Magistrate or Political Agent, of any of the above crimes, the maximum punishment for which, by the Portuguese Penal Code, does not exceed imprisonment for seven years or an equivalent thereto. Subject to the exceptions and conditions of this Convention, such requisition shall be complied with by the delivering up of the accused, unless reference to higher authority shall be deemed absolutely necessary.

The authority receiving a requisition may hold, or cause to be held, such inquiry as he may deem sufficient for the purpose of ascertaining the existence of *prima facie* proof of facts which constitute a crime for which extradition may be granted under clause (b) of this Convention, and, in the absence of such proof, may decline to deliver up the accused person.

(j) Every requisition shall ordinarily be accompanied by the summons or warrant of arrest, or an authenticated copy thereof, issued by the competent authority of the State applying for it, and by a statement setting forth the facts of the offence, and sufficient particulars to enable the accused to be identified.

In cases of urgency, satisfactory proof of the existence of a warrant of arrest issued by competent authority may be provisionally accepted in support of a requisition.

(k) If the person claimed has not already been arrested by the authorities of the State to whom the requisition is made, such authorities shall at once proceed to secure his appearance.

(l) Any person accused of any of the above crimes, and whether a subject of the party in whose dominions or jurisdiction he is found or otherwise, may be arrested by the authorities of such dominions—

on production of a warrant of arrest issued by the competent authority of the other party ;

or

or on advice, from such competent authority, transmitted by post, telegraph, or other means, stating the existence of such warrant of arrest ;

or on demand made by the Magistrate or Police-officer of the other party who has pursued the accused across the frontier ;

or on receipt of advice of the fact of the crime, whether communicated by a private complainant or otherwise, and whether or not the individual offender may be known or specified by name.

(*m*) Every such Magistrate or Police-officer who has pursued the accused across the frontier shall be entitled to the protection and assistance of the Magistrates and Police-officers of the State to whose dominions or jurisdiction the accused has fled. They shall forthwith take up the pursuit, and, without waiting for the orders of higher authority, shall make all necessary searches, inquiries, pursuits, arrests and recoveries of stolen property, in accordance with the local law of criminal procedure.

The Magistrate or Police-officer who has pursued the accused across the frontier shall not enter houses or buildings, or make searches or arrests, except in presence or under the authority of a local Magistrate or Police-officer, but shall act in subordination to the local Magistrates or Police-officers, and shall assist them, if so required, in all necessary searches, inquiries, pursuits, arrests and recoveries of stolen property.

(*n*) Whenever any person is arrested in the dominions or jurisdiction of the one party for any of the above crimes committed in the dominions or jurisdiction of the other party, notice shall be given to the authorities of the other party, who may then, if the accused is a subject of the State where he is found, claim that he be tried there; or, if he is not such a subject, claim his extradition as provided in this Convention.

(*o*) All weapons and articles necessary as evidence shall

shall be seized in order to their production before the proper officer, and in case of extradition, in order that they may be delivered up with the accused when the extradition shall take place.

Such seizure and delivery shall extend to articles stolen or obtained by other offences, and the proceeds of such property, and to everything that may serve as evidence of the crime; and shall be made even when the extradition cannot be made, or the trial cannot be held, on account of the flight or death of the accused.

Nothing in this clause shall affect the rights of third parties to any such weapons and articles.

(p) The expenses occasioned by the arrest, imprisonment, maintenance and transport of criminals, and the conveyance of articles, shall, within the dominions and as far as the frontier, be defrayed by the party in whose dominions or jurisdiction such criminals or articles are found: the expenses by sea and beyond the frontier shall be defrayed by the other party.

(q) A British subject accused of having committed any of the above crimes in the Portuguese Indian dominions or jurisdiction, may be dealt with by the British Indian authorities as if the crime had been committed in British India; and a Portuguese subject accused of having committed any of the above crimes in the British Indian dominions or jurisdiction, may be dealt with by the Portuguese Indian authorities as if the crime had been committed in Portuguese India:

Provided that the accused is found in the dominions or jurisdiction of the party to whom he is subject, and has not been acquitted or punished in the dominions or jurisdiction in which he committed the crime.

Complaints of any such crimes shall be inquired into by the police and judicial authorities irrespective of

of the nationality of the complainant, in accordance with the local laws.

(*r*) In all such trials and enquiries, the evidence of witnesses whose attendance cannot be procured without an unreasonable amount of delay, expense or inconvenience, may be recorded by the judicial authorities of the State where the offence occurred, on receipt of an interrogatory Commission from the other State, and such depositions or certified copies thereof shall be received by the authorities of the other State as valid evidence: Provided that the authorities of the one State shall in all cases aid those of the other, as far as may be, in securing the personal attendance of witnesses, and reasonable time shall be allowed for the production of evidence before the final discharge or conviction of the accused.

(*s*) If within two months after receipt of notice of the arrest no requisition for extradition or complaint or application for a trial shall have been made, the accused may be set at liberty. He shall be set at liberty if, within one month of the day on which he was brought to the frontier or seaport, and there placed at the disposal of the party claiming, he shall not have been despatched to the dominions of such party:

Provided that, until the extradition takes place, the accused may be liberated on bail or recognizance where such procedure is allowed by the law of the dominions or jurisdiction where he is found; and that, after the extradition, the procedure shall be that provided by the law of the other dominions or jurisdiction.

(*t*) The High Contracting Parties engage to aid each other in the apprehension and surrender of deserters from their respective naval and military forces, and to apply all the provisions of this Convention to the offence of deserting.

It is agreed that this Convention shall have effect from the first day of February one thousand eight hundred and eighty.

Done

Portuguese Treaty. [ACT IV, 1880.]

Done at Calcutta on the thirtieth day of January
in the year of our Lord one thousand eight hundred
and eighty.

LYTTON,

*Viceroy and Governor General
of British India.*

Done at Panjim on the twentieth day of January
in the year of our Lord one thousand eight hundred
and eighty.

CAETANO AL^{DRE}. D'ALMEIDA ALBUQUERQUE,
Governor General of Portuguese India.

THE BURMA BOUNDARIES ACT, 1880.

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ACT No. V OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 20th February, 1880).

An Act to provide for the demarcation of land and for the establishment and maintenance of boundary-marks in British Burma.

WHEREAS it is expedient to provide for the demarcation of land and for the establishment and maintenance of boundary-marks in British Burma; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called “The Burma Boundary-marks Act, 1880”:

It extends to the territories for the time being administered by the Chief Commissioner of British Burma;

and it shall come into force at once.

2. The Local Government may, from time to time, appoint persons, by name or by virtue of their office, to be Demarcation-officers and Boundary-officers, and may suspend or remove any person so appointed.

Commence-
ment.

Power to ap-
point Demar-
cation and
Boundary-
officers.

Every person so appointed shall, subject to the control of the Local Government and of any superior officer appointed by it in this behalf, exercise and perform, within such local limits as the Local Government may, from time to time, direct, the powers conferred, and

Functions of
such officers.

the

the duties imposed, by this Act or the rules made hereunder on such officers respectively.

CHAPTER II.

DEMARCATON OF BOUNDARIES.

A.—Proceedings of Demarcation-officers.

Power to
direct demar-
cation of
boundaries.

3. The Local Government may, whenever it thinks fit, by a notification in the official Gazette, direct that the boundaries of any land shall be demarcated by a Demarcation-officer.

Power to en-
ter on land
to effect de-
marcation.

4. On the publication of any such notification, a Demarcation-officer appointed by the Local Government in this behalf may enter upon the land specified therein, and make all enquiries and do all other things necessary for demarcating the boundaries of the said land.

Publication
of general
notice.

5. The Demarcation-officer shall cause to be published a general notice addressed to all persons owning, occupying or otherwise interested in the said land and the land marching therewith, and to all persons employed on or connected with the management of such land, calling upon them to attend, either personally or by agent, before him, at such places and at such times as may be stated in such notice, for the purpose of pointing out the boundaries and of rendering such aid as may be necessary in setting up or repairing the boundary-marks, and of affording such other assistance and information as may be needed for the purposes of the demarcation.

The persons to whom such notice is addressed shall not be legally bound to attend.

Power to
issue special
notice to pro-
cure attend-
ance.

6. The Demarcation-officer may also cause a special notice to be served on any of the persons mentioned in section five requiring such person to attend, personally or by agent, before him on or before a specified date, at such places and for such of the purposes aforesaid as may be stated in such notice; and every person upon whom such special notice may be served,

served shall be legally bound to attend as required by the notice, and, so far as he may be able, to do any of the things mentioned therein.

7. The Demarcation-officer may cause a special notice to be served on any owner or occupier of the said land requiring such owner or occupier to clear any boundary or other line which it may be necessary to clear for the purposes of the demarcation of such land, by cutting down and removing any trees, jungle, fences or standing crops, or to provide labour by furnishing flag-holders, or otherwise to assist in the demarcation of such land; and, if it is necessary to employ hired labour for these or other similar objects incidental to the demarcation, the Demarcation-officer may assess and recover from such owner or occupier the cost of such labour.

Clearing of
boundary-
lines.

8. If any demand for compensation is made in respect of the clearance of any line in accordance with a requisition under section seven, the Demarcation-officer shall determine and record the value of any trees, jungle, fences or standing crops which may have been cut down or removed, and shall pay or tender to the owners thereof the amount of compensation which in his opinion should be allowed therefor.

Compensa-
tion for in-
jury done by
clearance.

Any dispute arising concerning the sufficiency of the amount so paid or tendered shall be determined by the Deputy Commissioner upon application made to him for that purpose by either of the disputing parties.

9. The Demarcation-officer may issue a special notice calling upon any person who he has reason to believe can give any information respecting the boundaries of the land, or in whose possession or power any document relating to such boundaries is alleged to be, to attend before him and give such information or produce such document, on a date and at a place to be mentioned in the notice.

Power to
summon per-
son to give
information
or produce
document.

Every person on whom any such notice is served shall be legally bound to attend and to give such information or to produce such document as required by the notice.

10. The

Demarcation-officer to mark out boundaries,

10. The Demarcation-officer shall, after making such inquiry as he thinks fit, mark out the boundaries of the land, and may cause boundary-marks, of such materials, in such number, and in such manner, as he thinks fit, to be erected by the owners or occupiers of the land, or may erect such marks and charge the cost of such erection to such owners or occupiers, and shall forward a report of his proceedings to the Boundary-officer :

and submit report to Boundary-officer.

When Demarcation-officers may alter demarcation.

Provided that, at any time before forwarding his report to the Boundary-officer, the Demarcation-officer may, for any sufficient reason to be stated in such report, alter any boundary marked out by him.

B.—Proceedings of Boundary-officers.

General notice to persons affected.

11. The Boundary-officer shall, on receipt of the report of the Demarcation-officer, cause a general notice to be published, informing all persons concerned that such report is open to inspection, and requiring any person who may have any objections to make thereto to submit a written statement of such objections within one month from the date of the publication of such notice.

Special notice to persons likely to object.

Whenever the Boundary-officer has reason to believe that any person interested is likely to object to any boundary as laid down in such report, he shall cause a special notice to be served on such person requiring him to submit, within the said period of one month, a written statement of his objection.

Statements of objections.

No person shall be entitled as of right to submit any statement of objection after the expiration of the said period of one month ; but it shall be in the discretion of the Boundary-officer to admit any such statement after the expiration of such period and before the order next hereinafter mentioned has been made.

Order of Boundary-officer.

12. When the said period of one month has expired and the objections (if any) made within it or subsequently admitted by the Boundary-officer have been inquired into by him, and any further inquiry which he may deem necessary has been made by him,

the

the Boundary-officer shall pass such order as he thinks fit, confirming or modifying the boundaries as determined by the Demarcation-officer. •

If any objection seems to him not to be well-founded, the Boundary-officer may direct that all expenses of the inquiry which have arisen from such objection shall be recovered from the person who made the same.

13. When any person, within sixty days from the date of the order passed under section twelve, makes any objection to the correctness of the demarcation-proceedings, the Boundary-officer may, in his discretion, either refuse to inquire into such objection, or may require the person making the same to deposit, within a reasonable time, the estimated costs of any further inquiry which it may be necessary to make in respect thereof. Objections subsequently made how dealt with.

14. If the costs of such further inquiry are deposited, the Boundary-officer shall, after making such inquiry, pass an order rejecting such objection or admitting the same and amending the order passed under section twelve. Boundary-officer to make further inquiry.

If, on such inquiry, the objection seems to the Boundary-officer not to be well-founded, he may pass such order as he thinks fit in respect of the recovery, from the person making the objection, of any sum expended on the inquiry in excess of the sum deposited, and of any necessary expenses incurred by any other person on account of such inquiry.

No person making an objection under section thirteen shall, unless the Boundary-officer specially so directs, recover any portion of the amount deposited by him under section thirteen.

15. For the purposes of any inquiry under this Act, the Boundary-officer shall, in addition to the powers conferred specially by this Act, have all the powers of a Demarcation-officer and also power to summon and enforce the attendance of witnesses and compel the production of documents, so far as may be, by the same means and in the same manner as is provided in the case of a civil Court by the Code of Civil Procedure. Power to enforce attendance of witnesses, &c.

16. The

Power to refer dispute to arbitration.

16. The Boundary-officer, whenever he thinks fit, may, with the consent of the parties concerned, refer to arbitration any dispute as to a boundary.

The procedure laid down in chapter XXXVII of the Code of Civil Procedure shall apply (so far as may be) to such references.

Effect of orders of Boundary-officer.

17. The order passed by the Boundary-officer under section twelve, or, when such order is amended under section fourteen, such amended order shall, unless and until it be reversed or modified in manner hereinafter provided, be conclusive.

C.—Appeals from Orders of Boundary-officers.

Orders appealable to Commissioner.

18. An appeal shall lie to the Commissioner of the Division from every order passed by a Boundary-officer under section twelve, section thirteen or section fourteen.

Decision when final.

19. If the Commissioner confirms the order of the Boundary-officer on a matter of fact, such decision shall be final and conclusive.

Second appeal when allowed.

In all other cases in which the Commissioner confirms the order of the Boundary-officer, and in all cases in which the Commissioner reverses or modifies the order of the Boundary-officer, an appeal shall lie to the Judicial Commissioner, or, when the land comprised in the order is situated within the local limits of the ordinary civil jurisdiction of the Recorder of Rangoon, to such Recorder.

Period of limitation.

20. The period of limitation for an appeal under section eighteen or section nineteen shall run from the date of the order or decision appealed against, and shall be as follows, that is to say :—

(a) in the case of an appeal under section eighteen—sixty days ;

(b) in the case of an appeal under section nineteen—ninety days.

In computing such periods of sixty and ninety days, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

21. The

21. The Commissioner, the Judicial Commissioner and the Recorder of Rangoon shall in hearing and determining appeals presented under this Act have, as nearly as may be, the same powers as they have in the case of appeals from decrees and orders in civil suits.

Powers of
Commis-
sioner, &c.

D.—Boundary-marks.

22. Whenever an order determining a boundary has become final, the Boundary-officer shall, unless permanent boundary-marks of a suitable description have already been erected along such boundary, cause to be erected permanent boundary-marks, of such materials, in such number, and in such manner, as he may consider sufficient to distinguish such boundary.

When per-
manent
boundary-
marks are to
be erected.

An order determining a boundary becomes final for the purposes of this section when it is not open to appeal.

23. All expenses incurred by the Boundary-officer in erecting such boundary-marks for any land shall be apportioned amongst the owners or occupiers of such land, in such proportions as the Boundary-officer may think fit.

Apportion-
ment of
expense of
erection of
marks.

24. When the expenses have been apportioned among such owners or occupiers, the Boundary-officer shall cause a notice to be served on each of them, specifying the amount payable by him in respect of such expenses, and requiring him to pay such amount to the Boundary-officer within one month from the service of such notice.

Notice to
owners to
pay share of
expense.

25. The Boundary-officer may further cause a notice to be served on any owner or occupier, placing under his charge any boundary-marks erected on the boundary of his land, whether by order of such officer or otherwise.

Power to
place marks
under charge
of owners and
occupiers.

Every owner or occupier shall preserve such boundary-marks as may be placed under his charge under this section, and shall give immediate notice to the nearest Magistrate or the officer in charge of the nearest Police-station if any such marks are injured, destroyed or removed, or require repairs,

Duty to
preserve
boundary-
marks.

Duty to give
notice of any
injury occur-
ing to them.

26. Whenever

Power to re-
erect and re-
pair bound-
ary-marks.

26. Whenever a Magistrate of the first or second class becomes aware that any mark erected under this Act within the local limits of his jurisdiction has been injured, destroyed or removed, or requires repairs, such Magistrate may cause such mark to be re-erected, restored or repaired, and may recover any expenses incurred in respect of such re-erection, restoration or repair from the owner or occupier who is bound under section twenty-five to preserve such mark.

Duties of
village-
officers.

27. It shall be the duty of every village-headman and thoogyec—

- (a) to prevent the destruction, injury or alteration of any boundary-mark within the local limits of his jurisdiction ;
- (b) whenever he becomes aware that any such mark has been destroyed, injured or altered, to report immediately to the officer in charge of the nearest Police-station or to the nearest Magistrate such destruction, injury or alteration.

CHAPTER III.

MISCELLANEOUS.

Survey-
officer.

28. When any officer is appointed by the Government to make a survey of any land, the Chief Commissioner may invest such officer, for the purposes of such survey, with all or any of the powers conferred on Demarcation-officers by sections four to nine (both inclusive), and also with power to cause any boundary or other marks to be erected by the owners or occupiers of any land, or to erect such marks and to charge the cost of such erection to such owners or occupiers.

Power to
perform order
under Act at
expense of
person dis-
obeying it.

29. If any owner or occupier of any land, or any other person, being ordered in accordance with the provisions herein contained to perform any act, fails to perform such act within a reasonable time, the officer who gave the order may, after giving notice to such owner, occupier or other person of his intention so to do, cause the act to be performed ; and the expenses

expenses incurred in such performance shall be payable by such owner, occupier or other person.

30. Whoever, being legally bound to comply with any lawful order under this Act, or with the requisition contained in any special notice served upon him under this Act, refuses or neglects to comply therewith, shall be punished with fine which may extend to fifty rupees. Penalty for refusing or neglecting to comply with orders or notice.

31. Every amount due under the provisions of this Act may be recovered as if the same were an arrear of land-revenue. Recovery of amounts due under Act.

32. The Chief Commissioner may, from time to time, make rules consistent with this Act— Power to make subsidiary rules.

- (a) for the collection and record of any information in respect of any land ;
- (b) prescribing and limiting the powers and duties of officers conducting proceedings under this Act ;
- (c) regulating the delegation by such officers to subordinate officers of the powers and duties conferred and imposed on them respectively by this Act or the rules made hereunder ;
- (d) for the proper performance of all things to be done, and for the regulation of all proceedings to be taken, under this Act ;
- (e) for the publication, issue and service of all notices, whether general or special, to be published, issued or served under this Act ; and
- (f) for carrying out generally the purposes of this Act.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law. Mode of publication.

ACT No. VI OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 2nd March, 1880).

An Act to amend the law relating to the licensing of trades and dealings.

WHEREAS it is expedient to amend the law at present in force for the licensing of trades, dealings and industries in certain parts of British India; It is hereby enacted as follows:—

1. This Act may be called “The Indian License Acts Amendment Act, 1880.”

The Northern India License Act, 1878.

2. The following portions of the Northern India License Act, 1878, are hereby repealed. that is to say:—

the portion of section one from and including the words “but nothing herein contained” to the end;

section two;

and the portion of the schedule from and including the words and figures “class I-II” to the end.

3. In the same Act, to section three, the following shall be added, that is to say:—

“In this Act the word ‘trade,’ ‘dealing’ or ‘calling’ shall not be deemed to include the following, that is to say:—

“(a) agriculture;

“(b) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by

Preamble.

Short title.

Repeal of portions of Northern India License Act, 1878.

Addition to section 3 of same Act.

‘Trade,’ ‘dealing’ and ‘calling.’

a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market;

“(c) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce.”

Substitution
of new sec-
tion for sec-
tion 4 of
same Act.

4. In the same Act, to section four, the following shall be added, that is to say:—

“Provided that, if such person carries on such trade or dealing in more than one such district, he shall take out such license in the district in which his principal place of business in the said territories is situate.

“When any question arises as to what shall, for the purposes of this Act, be deemed to be the principal place of any business, the Governor General in Council, or such authority as the Governor General in Council may from time to time appoint in this behalf, shall decide such question, and his or its decision thereof shall be final.”

Amendment
of sections 6,
7 and 8 of
same Act.

5. In sections six, seven and eight of the same Act, for the words “such district,” wherever they occur, the words “the said territories” shall be substituted.

Amendment
of section 7
of same Act.

6. In section seven of the same Act, for the words “first day of January,” the words “thirty-first day of March” shall be substituted.

Amendment
of sections 9
and 10 of
same Act.

7. In sections nine and ten of the same Act, for the figures “1878,” the figures “1880” shall be substituted.

In section ten of the same Act, for the word “thirty,” the word “sixty,” and for the word “February,” the word “June” shall be substituted.

Madras License Act, 1878.

Repeal of
portions of
Madras
License Act,
1878.

8. In section five of the Madras License Act, 1878, the words “and whose annual nett earnings or profits exceed two hundred rupees,” and the portion of the schedule of the same Act from and including
the

the words and figures "class XII," to the end, are hereby repealed.

9. In the same Act, for section three, the following section shall be substituted :—

Substitution of new section for section 3 of same Act.

"In this Act the word 'trade,' 'dealing' or 'industry' shall not be deemed to include the following, that is to say :—

'Trade,' 'dealing' or 'industry' defined.

"(a) agriculture ;

"(b) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market ;

"(c) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce."

10. In section eight of the same Act, for the words "first day of January," the words "thirty-first day of March" shall be substituted.

Amendment of section 8 of same Act.

11. In sections ten and eleven of the same Act, for the figures "1878," the figures "1880" shall be substituted.

In the same Act, "1880" substituted for "1878."

12. In section eleven of the same Act, for the word "March" in both places in which it occurs, the word "June" shall be substituted.

Amendment of section 11 of same Act.

The Bombay License Act, 1878.

13. In section one of the Bombay License Act, 1878, the words "but nothing herein contained applies to persons earning their livelihood solely by agriculture" are hereby repealed ; and to section two of the same Act, the following words shall be added :—

Amendment of sections 1 and 2 of Bombay License Act, 1878.

"and the word 'trade,' 'dealing,' 'industry,' 'calling' or 'occupation' shall not be deemed to include the following, that is to say :—

'Trade,' 'dealing,' 'industry,' 'calling,' 'occupation' defined.

"(a) agriculture ;

"(b) the

“(b) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent in kind to render the produce raised or received by him fit to be taken to market;

“(c) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce.”

In the same Act, “1880” substituted for “1878.”

14. In sections nine and ten of the same Act, for the figures “1878,” the figures “1880” shall be substituted.

Amendment of sections 7 and 11 of same Act.

15. In section seven of the same Act, for the words “first day of January,” the words “thirty-first day of March” shall be substituted;

and in section ten of the same Act, for the word “thirty,” where it first occurs, the word “sixty” shall be substituted; and for the words “within thirty days next after the first of January,” the words “before the first day of June” shall be substituted.

Amendment of schedule A of same Act.

16. In schedule A annexed to the same Act, for the words and figures “Companies registered under the Indian Companies Act, 1866,” the words “Joint Stock Companies” shall be substituted.

Amendment of schedule B of same Act.

17. In schedule B annexed to the same Act, the words and figures “class XII, Rs. 7, class XIII, Rs. 5, class XIV, Rs. 3, class XV, Rs. 2” are hereby repealed.

General.

Recovery of money due when Act passes

18. Notwithstanding anything hereinbefore contained, any money due at the time of the passing of this Act, under any of the Acts hereby amended, may be recovered as if this Act had not been passed.

Trade, &c., carried on in various parts of British India.

19. When any person is engaged in any trades, dealings, industries or callings in two or more of the local areas to which the several Acts hereby amended and the Bengal License Act for the time being in force

1880.]

License Acts Amendment.

force respectively extend, and is thereby liable to pay fees under two or more of such Acts, he shall, if the Governor General in Council so directs, be chargeable with a fee only under such one of those Acts as the Governor General in Council may direct, and the amount of such fee shall be calculated as if he was engaged in all such trades, dealings, industries and callings within the local area to which such Act applies.

A direction under this section may be given by general rule or special order.

THE INDIAN MERCHANT SHIPPING ACT, 1880.

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ACT No. VII of 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 11th March, 1880.)

An Act to amend the law relating to Merchant Shipping, and for other purposes.

WHEREAS it is expedient to prevent the departure of certain ships from British India; Preamble.

and whereas it is also expedient to provide for the relief of distressed seamen and apprentices at ports in British India, and for the recovery of wages due to, and expenses incurred in respect of, such seamen and apprentices in cases to which section 211 of the Merchant Shipping Act, 1854, and section 16 of the Merchant Shipping Act, 1855, do not apply of their own force;

and whereas it is also expedient to provide in other respects hereinafter appearing for the regulation and control of merchant shipping; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called “The Indian Merchant Shipping Act, 1880.” Short title.

and it shall come into force on the first day of June, 1880. Commencement.

2. In this Act, unless there is something repugnant in the subject or context,— Interpretation-clause.

“ship” includes every description of vessel used in navigation, not propelled by oars: “ship:”

“master”

"master:" "master" means any person (except a Pilot or Harbour-master) having for the time being the charge or control of a ship :

'port." "port" in any provision of this Act includes also any part of a river or channel leading to a port which for the purposes of such provision the Local Government may, from time to time, by notification in the official Gazette, declare to be included in such port.

CHAPTER II.

UNSEAWORTHY AND UNSAFE SHIPS.

Saving
clause.

3. Nothing in this chapter contained shall apply—

(a) to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council;

(b) to any ship of less than one hundred and fifty tons register employed solely in fishing or in plying coastwise between ports situate in India and Ceylon;

(c) to any pleasure yacht.

Interpreta-
tion-clause.

"British
Indian ship."

4. In this chapter, "British Indian ship" means a ship registered under Act No. XIX of 1838, Act No. X of 1841, or Act No. XI of 1850, or under any other law passed by the Governor General in Council and for the time being in force for the registration of ships in India; and

"British
ship:"

"manner
prescribed :

"British ship" includes a British Indian ship :

"manner prescribed" means such manner as the Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by rules published in the official Gazette, prescribe :

"Unseaworthy."

A ship is "unseaworthy" within the meaning of this chapter when the materials of which she is made, her construction, the qualifications of the master, the number and description of the crew, the weight, description and stowage of cargo, the tackle, sails, rigging, stores, ballast and other equipment generally are not such as to render her in every respect fit for the proposed voyage or service :

A

A ship is "unsafe" within the meaning of this chapter when by reason of the defective condition of her hull, equipments or machinery, or by reason of overloading or improper loading, she is unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended. "Unsafe."

Sending or taking Unseaworthy Ship to Sea.

5. Every person who sends or attempts to send a British Indian ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, shall, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Every person sending unseaworthy ship to sea liable to penalty.

Every master of a British Indian ship who knowingly takes such ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Master taking unseaworthy ship to sea liable to penalty.

For the purpose of giving such proof, every person charged under this section may give evidence in the same manner as any other witness.

No prosecution under this section shall be instituted except by, or with the consent of, the Local Government.

Prosecution to be by, or with consent of, Local Government.

Implied Condition of Seaworthiness in Contract of Service.

6. In every contract of service, express or implied, between the owner of a British ship and the master

Obligation of owner to crew with

or

respect to
seaworthi-
ness.

or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to secure the seaworthiness of such ship for the voyage at the time when such voyage commences, and to keep her in a seaworthy state for the voyage during the same :

Proviso.

Provided that nothing in this section shall subject such owner to any liability by reason of such ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending her to sea is reasonable and justifiable.

Detention of Unsafe Ships by the Local Government.

Provisional
detention by
Local Govern-
ment.

7. The Local Government, if it has reason to believe, on complaint or otherwise, that a British ship in any port to which it may from time to time specially extend this section, is unsafe, may provisionally order the detention of such ship for the purpose of being surveyed.

Service of
grounds on
master.

A written statement of the grounds of such detention shall be forthwith served on the master of such ship.

Power to
appoint sur-
veyor.

8. When the Local Government provisionally orders the detention of a ship, it shall forthwith appoint some competent person to survey such ship and report thereon, and, on receiving his report, may either order the ship to be released or, if in its opinion the ship is unsafe, may order her to be finally detained.

Action on re-
ceipt of his
report.

Order of fi-
nal detention.

An order of final detention under this section may be either absolute or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Local Government thinks necessary for the protection of human life; and the Local Government may,

may, from time to time, vary or add to any such order :

Provided that, before an order for final detention is made, a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master may appeal against such report, in the manner prescribed, to the Court of Survey (hereinafter mentioned) for the port where the ship is detained.

Service of report on master and appeal to Court of Survey.

9. Where a ship has been provisionally detained and a person has been appointed under section eight to survey such ship, the owner or master of the ship, at any time before such person makes such survey, may require that he shall take with him as assessor such person as such owner or master may select, being a person named in the list of assessors prepared under section fifteen, or, if there is no such list, or if it is impracticable to procure the attendance of any person named in such list, a person of nautical, engineering or other special skill and experience ; and

Option to owner or master of appointing assessor to accompany surveyor.

in such case, if the surveyor and assessor agree that the ship should be detained or released, the Local Government shall cause the ship to be detained or released accordingly, and the owner or master shall have no appeal ;

Procedure where surveyor and assessor agree ;

but if the surveyor and assessor differ in their report, the Local Government may act as if the requisition had not been made, and the owner or master shall have such appeal touching the report of the surveyor as is hereinbefore provided.

where they differ.

10. Notwithstanding anything contained in section eight the Local Government may at any time, when a ship has been provisionally detained, instead of following the procedure hereinbefore provided, refer the matter to the Court of Survey for the port where the ship is detained.

Power to refer to Court of Survey.

**Detaining-officers.*

11. For the better execution of this chapter, the Local Government may, from time to time, appoint

Detaining-officers.

a sufficient number of fit persons as its officers, and may suspend or remove any of them.

Their powers generally:

Every officer so appointed (hereinafter referred to as a detaining-officer) shall have, for the purpose of his duties under this chapter, the following powers, (that is to say) :—

(a) he may go on board any British ship and may inspect the same or any part thereof, or any of the machinery, equipments and cargo on board thereof, and may require the unloading or removal of any cargo, ballast or tackle, not unnecessarily detaining or delaying her from discharging, unloading or proceeding on any voyage ;

(b) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him, may examine such persons, and may, by a like summons, require returns in writing to any enquiries he thinks fit to make ;

(c) he may require and enforce the production of all books, papers or documents which he considers important ; and

(d) he may administer oaths, or may, in lieu of administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

Their power to order provisional detention and survey.

12. Every detaining-officer shall, in addition to the powers hereinbefore conferred, have the same power as the Local Government has under sections seven and eight, respectively, of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to survey her ; and if he thinks that a ship so detained by him is not unsafe, may order her to be released.

Detaining-officer to report to Local Government.

Every such officer shall forthwith report to the Local Government any order made by him for the detention or release of a ship.

Of

Of the Court of Survey and of Appeals and References thereto.

13. A Court of Survey for a port shall consist of a Judge sitting with two assessors. Constitution of Court of Survey.

14. The Judge shall be a District Judge, Judge of a Court of Small Causes, Presidency Magistrate, Magistrate of the first class or other fit person appointed in this behalf by the Local Government either generally or for any specified case. The Judge.

15. The assessors shall be persons of nautical, engineering or other special skill and experience. The assessors.

One of them shall be appointed by the Local Government either generally or in each case, and the other shall be summoned by the Judge, in the manner prescribed, out of a list of persons from time to time prepared for the purpose and published by the Local Government in the official Gazette, or, if there is no such list or if it is impracticable to procure the attendance of any person named in such list, shall be appointed by the Judge.

16. The Judge shall, on receiving notice of an appeal or a reference from the Local Government, immediately-summon the assessors, in the manner prescribed, to meet forthwith. Judge to summon assessors.

17. Every such appeal and reference shall be heard in open Court. Case to be heard in open Court.

18. The Judge and each assessor shall, for the purposes of this chapter, have the same powers as are by section eleven conferred on a detaining-officer. Powers of Judge and assessors.

19. The Judge may appoint any competent person to survey the ship and report thereon to the Court. Judge may appoint surveyor.

20. The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Local Government, may attend at any inspection or survey made in exercise or pursuance of the powers conferred by section eighteen or section nineteen. Owner or master may attend at survey.

21. The

Power of Judge to detain or release ship.

21. The Judge shall have the same power as the Local Government has to order the ship to be released or finally detained ; but, unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

Report to Local Government by Court.

22. The Judge shall report the proceedings of the Court in each case to the Local Government in the manner prescribed, and each assessor shall either sign such report or report to the Local Government the reasons for his dissent.

Power of Local Government to make rules with respect to Court of Survey.

23. The Local Government may, with the previous sanction of the Governor General in Council, from time to time make rules to carry into effect the provisions of this chapter with respect to a Court of Survey, and in particular with respect to—

(a) the procedure before the Court ;

(b) the requiring, on an appeal, of security for costs and damages ;

(c) the amount and application of fees ; and

(d) the ascertainment, in case of dispute, of the proper amount of costs under this chapter.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Scientific Referees.

Power to appoint referee to hear appeal.

24. If the Local Government is of opinion that an appeal under this chapter involves a question of construction or design, or of scientific difficulty or important principle, it may refer the matter to such one or more out of a list of scientific referees, to be from time to time prepared by the Local Government, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Port-officer and the appellant, or, in default of any such agreement, by the Local Government; and thereupon the appeal shall be determined by the referee or referees instead of by the Court of Survey.

Option to appellant to

25. The Local Government, if the appellant in any such appeal so requires and gives security to its satisfaction

satisfaction to pay the costs of and incidental to the reference, shall refer such appeal to a referee or referees selected as aforesaid. require referee to be appointed.

26. The referee or referees to whom an appeal is referred under section twenty-four or section twenty-five shall have the same powers as a Judge of the Court of Survey. Referee to have powers of Court of Survey.

Costs of Detention and Damages incidental thereto.

27. If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of a ship, the Government shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey. Liability of Government for costs and damages when ship wrongly detained.

28. If a ship is finally detained under this chapter, or if it appears that a ship provisionally detained was at the time of such detention unsafe, the owner of the ship shall be liable to pay to Government its costs of and incidental to the detention and survey of the ship; and such costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable. Liability of shipowner for costs when ship rightly detained.

29. For the purposes of this chapter the costs of and incidental to any proceeding before a Court of Survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Local Government, shall be deemed to be part of the costs of the detention and survey of the ship. What included in costs of detention and survey.

30. When a complaint is made to the Local Government or a detaining-officer that a British ship is unsafe, it shall be in the discretion of such Government or officer (as the case may be) to require the complainant to give security to the satisfaction of such Government or officer for the costs and compensation which such complainant may become liable to pay as hereinafter mentioned: Power to require from complainant security for costs, &c.

Provided that, where the complaint is made by one-fourth, being not less than three, of the seamen belonging Proviso as to complaint by

one-fourth
of crew.

belonging to the ship, and is not in the opinion of such Government or officer frivolous or vexatious, such security shall not be required; and such Government or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps to ascertain whether the ship ought to be detained under this chapter.

Costs, &c.,
payable by
Government
recoverable
from com-
plainant.

31. Where a ship is detained in consequence of any complaint, and the circumstances are such that the Government is liable under this chapter to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Government all such costs and compensation as the Government incurs, or is liable to pay, in respect of the detention and survey of the ship.

Grain-cargoes.

Stowage of
cargo of
grain, &c.

32. No cargo of which more than one-third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts or nut-kernels (hereinafter referred to as grain-cargo) shall be carried on board any British Indian ship unless the same be contained in bags, sacks or barrels, or secured from shifting by boards or bulkheads or otherwise.

Penalty for
improper
stowage of
such cargo.

If the owner or master of any ship, or any agent of such owner who is charged with the loading of such ship or the sending her to sea, knowingly allows any grain-cargo or part of a grain-cargo to be shipped therein for carriage contrary to the provisions of this section, he shall be punished with fine which may extend to three thousand rupees.

Deck and Load-lines.

Marking of
deck-lines.

33. Every British Indian ship shall be permanently and conspicuously marked with lines of not less than twelve inches in length and one inch in breadth painted longitudinally on each side amidships or as near thereto as is practicable, and indicating the position of each deck which is above water.

The upper edge of each of these lines shall be level with the upper side of the deck-plank next the water-

way

way at the place of marking. The lines shall be white or yellow on a dark ground, or black on a light ground.

34. The master of every British ship not being a coasting-vessel within the meaning of the Sea Customs Act, 1878, shall, before his ship is entered outwards from any port in British India upon any voyage, or if that is not practicable, as soon after as may be, mark outside upon each of her sides amidship, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre.

Marking of
load-lines.

The centre of such disc shall indicate the maximum load-line in salt-water to which it is intended to load such ship for that voyage.

35. The person applying for entry of any such ship outwards shall insert, in the form of application made to the Customs-collector, a statement in writing of the distances in feet and inches between the centre of such disc and the upper edge of each of the lines indicating the position of the ship's deck which is above such centre: and if default is made in delivering this statement, the Customs-collector may refuse to enter the ship outwards.

Statement in
application
to Customs-
officer
for entry
outwards.

36. A copy of this statement shall be entered in the agreement with the crew before it is signed by any member of the crew; and no shipping-master shall proceed with the engagement of the crew till this entry is made.

Copy of
statement to
be entered
in agreement
with the
crew and in
the log-book.

The master shall enter a copy of this statement in the official log-book (if any).

37. When a ship has been marked as by section thirty-four required, she shall be kept so marked until she next returns to a port of discharge in British India or arrives at a port in the United Kingdom.

Ship to be
kept marked.

38. The master of every British ship which is a coasting-vessel within the meaning of the Sea Customs Act, 1878, shall, before proceeding to sea from any port, mark outside upon each of her sides amid-

Marking of
load-lines in
case of coast-
ing-vessels.

ship,

ship, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre.

The centre of this disc shall indicate the maximum load-line in salt-water to which it is intended to load the ship, until notice is given of an alteration.

Annual statement as to position of load-line.

39. He shall also once in every twelve months, immediately before the ship proceeds to sea, send or deliver to the Collector, or other principal officer of Customs of such port as the Local Government may, from time to time, appoint on this behalf, a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre.

The master, before the ship proceeds to sea after any renewal or alteration of the disc, shall send or deliver to the Collector or other principal officer of Customs aforesaid notice in writing of such renewal or alteration, together with such statement in writing as before mentioned of the distance between the centre of the disc and the upper edge of each of the deck-lines.

If default is made in sending or delivering any notice or statement required by this section to be sent or delivered, the master shall be punished with fine which may extend to one thousand rupees.

Ship to be kept marked.

40. When a ship has been marked as required by section thirty-eight, she shall be kept so marked until notice is given of an alteration.

Penalty for neglecting to mark, or submerging load-line.

41. Any master of a ship who neglects to cause his ship to be marked as by this chapter required, or to keep her so marked, or who allows the ship to be so loaded that when in perfectly smooth salt-water the centre of the disc is submerged,

and any person who conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate,

any

any of the said marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy,

shall be punished for each such offence with fine which may extend to one thousand rupees.

42. If any of the marks required by this chapter is in any respects inaccurate so as to be likely to mislead, the master of the ship shall be punished with fine which may extend to one thousand rupees.

Penalty on master for having misleading marks.

43. The provisions of this chapter as to load-lines shall not apply to ships coming from ports in the United Kingdom and marked with such lines in accordance with the provisions of the laws for the time being there in force.

Saving of ships marked in the United Kingdom.

Supplemental Provisions.

44. The Local Government may at any time, if satisfied that a ship detained under this chapter is not unsafe, order her to be released either upon or without any conditions.

Release of ship at any time by Local Government.

45. When under this chapter a ship is authorized or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, any commander or first officer of any of Her Majesty's Indian Government ships, or any Port-officer, Harbour-master, Conservator of a port or officer of customs may detain the ship.

Who may enforce detention of ship.

46. If any ship after such detention, or after service on the master of any notice of or order for such detention, proceeds to sea before she is released by competent authority, the master of the ship shall be punished with fine which may extend to one thousand rupees.

Penalty for proceeding to sea after detention.

47. When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any person authorized under this chapter to detain or survey such ship, the owner and master of such ship shall each be liable to pay all expenses of, and incidental to, such person being so taken to sea, and shall

Penalty for carrying to sea officer in execution of his duty.

also

also each be punished with fine which may extend to one thousand rupees.

When any owner or master is convicted of an offence under this section, the convicting Magistrate may enquire into and determine the amount payable on account of expenses by such owner or master under this section, and may direct that the same shall be recovered from him in manner provided for the recovery of fines.

Detained ship not to be released because British registry closed.

48. When a ship has been detained under this chapter, she shall not be released by reason of her British or British Indian register being subsequently closed.

Powers of person authorized to survey ship.

49. For the purposes of the survey of a ship under this chapter, any person authorized to make the same may go on board the ship and inspect the same, and every part thereof, and the machinery, equipments and cargo, and may require the unloading or removal of any cargo, ballast or tackle.

Certain persons to be deemed public servants.

50. Every Judge, assessor, officer or surveyor under this chapter shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Service of order, where there is no master or resident-owner, &c.

51. Where any order, notice, statement or document is required for the purpose of any provision of this chapter, to be served on the master of a ship, the same shall be served, where there is no master, on the owner of the ship, if he resides in the port where the ship is detained, or, if there is no owner residing there, on some agent of the owner residing there; or where such owner or agent is unknown or cannot be found, a copy of such order, notice, statement or document shall be affixed to the mast of the ship, and shall thereupon be deemed to be duly served.

Order, &c., how to be served.

52. Any such order, notice, statement or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or, in the case of a master, by leaving it for him on board the ship with the person being or appearing to be in command or charge of the ship.

53. The

53. The Local Government may, from time to time, by notification in the official Gazette, delegate either absolutely or subject to such conditions or restrictions as it thinks fit, to any body of Commissioners or trustees appointed for managing the affairs of a port all or any of the powers, and require the said body to discharge all or any of the functions, of a Local Government under the foregoing sections of this Act, except the powers conferred by section fourteen, the power of preparing a list of assessors under section fifteen and the power of making rules, and may cancel any such notification.

Delegation of powers to Port Commissioners, &c.

While any such notification remains in force, all costs and damages which would otherwise be recoverable under this Act by or from the Government shall be recoverable in like manner by or from such body; and such body shall, notwithstanding anything to the contrary contained in any enactment now in force, credit or pay, as the case may be, the amount of any costs or damages so recovered to or from the funds held by them in trust as such body.

CHAPTER III.

DISTRESSED SEAMEN.

54. This chapter shall be read with, and taken as part of, Act No. I of 1859 (*for the amendment of the law relating to Merchant Seamen*).

Chapter to be taken as part of Act I of 1859.

But nothing in this chapter contained applies to seamen or apprentices to whom the provisions of section 211 of the Merchant Shipping Act, 1854, or of section 16 of the Merchant Shipping Act Amendment Act, 1855, apply.

Saving of provisions of Merchant Shipping Acts, 1854 and 1855.

In this chapter "Local authority" means such person as the Local Government may from time to time, subject to the control of the Governor General in Council, appoint by name or in virtue of his office to exercise the powers conferred, and to perform the duties imposed, on the local authority under this chapter.

"Local authority."

Power to
suspend or
dismiss.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Relief of dis-
tressed sea-
men at In-
dian ports.

55. The local authority may, subject to the rules hereinafter mentioned, provide for the subsistence—

(a) of all seamen and apprentices, being Native Indian subjects of Her Majesty, who have been shipwrecked, discharged or left behind at any place in British India, whether from any British ship employed in the merchant-service, or from any of Her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign Power, or to the subject of any foreign State, and who are in distress in any such place; and

(b) of all seamen and apprentices not being Native Indian subjects who have been shipwrecked, discharged or left behind at any place in British India from any British ship registered in British India and who are in distress in any such place,

until such time as such authority is able to provide them with a passage as hereinafter provided.

Distressed
seamen to be
sent home on
board British
ship wanting
seamen to
make up its
crew.

56. Subject as aforesaid, the local authority may cause such seamen or apprentices to be put on board some ship belonging to any subject of Her Majesty which is in want of men to make up its complement; and is bound—

(a) in the case of seamen or apprentices who are Native Indian subjects of Her Majesty, to their home or to a port in British India near their home;

(b) in the case of other British seamen or apprentices, to any port in the United Kingdom or the British possession to which they belong (as the case requires); and

(c) in the case of seamen or apprentices not being subjects of Her Majesty, to such place as the local authority, subject to the control of the Governor General in Council, may in each case determine.

In default of
such ship, on

57. In default of any such ship, the local author-
ity

ity may, subject as aforesaid, provide such seamen or apprentices with a passage in any ship (whether British or foreign) bound as aforesaid. board of any ship.

58. The local authority shall indorse on the agreement of any British ship on board of which any seaman or apprentice is sent under section fifty-six or section fifty-seven, the name of every person so sent on board thereof, with such particulars concerning the case as the Governor General in Council may from time to time by rule prescribe. Name and other particulars with regard to seamen to be indorsed on agreement of British ship.

59. The master of every British ship bound as aforesaid shall receive and afford a passage and subsistence to all seamen and apprentices whom he is required to take on board his ship under the provisions of section fifty-six or section fifty-seven, not exceeding one for every fifty tons burden, and shall, during the passage, provide every such seaman or apprentice with a proper berth or sleeping-place effectually protected against sea and weather. Master of British ship compelled to convey and give subsistence to such seamen.

60. If the master of any such ship fails or refuses to receive on board his ship, or to give a passage or subsistence to, or to provide for, any such seaman or apprentice contrary to the provisions of section fifty-nine, he shall, for each seaman and apprentice with respect to whom he so fails or refuses, be punished with fine which may extend to one thousand rupees, or, when he is tried at any place beyond the limits of British India, to the equivalent of one thousand rupees in the currency of such place. Penalty for refusing so to do.

61. When any master of a British ship has conveyed a seaman or apprentice in excess of the number (if any) wanted to make up the complement of his crew to any place in accordance with the requisition of a local authority under this chapter, such master shall be entitled to be paid by the Secretary of State for India in Council in respect of the subsistence and passage of such seaman or apprentice such sum per diem as the Governor General in Council from time to time appoints : Conditions under which master may claim payment.

Provided that no payment shall be made under this section

section except on the production of the following documents (that is to say) :—

(a) a certificate signed by the local authority by whose direction such seaman or apprentice was received on board, specifying the name of such seaman or apprentice, and the time when he was received on board; and

(b) a declaration in writing by such master made and verified in manner hereinafter provided, and stating—

(1) the number of days during which such seaman or apprentice received subsistence and was provided for as aforesaid on board his ship;

(2) the number of men and boys forming the complement of his crew;

(3) the number of seamen and apprentices employed on board his ship during the time such seaman or apprentice was on board; and

(4) every variation (if any) of such number.

The declaration required by this section shall, in the case of a ship conveying Native Indian subjects of Her Majesty to a port in British India, be made before a shipping-master or such other officer as the Local Government may appoint. In other cases such declaration shall be made and verified in the same manner as declarations made under section 212 of the Merchant Shipping Act, 1854.

Wages and expenses incurred in respect of distressed seamen to be charged on ship to which they belong in certain cases.

62. (a). If any seaman or apprentice, being a Native Indian subject of Her Majesty and belonging to any British ship, is discharged or left behind at any place in British India without full compliance on the part of the master with all the provisions in that behalf of the law for the time being in force, and becomes distressed and is relieved under the provisions of this chapter; or

(b) if any such seaman or apprentice, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power or to the subject of any foreign power, becomes distressed and is relieved as aforesaid; or

(c) if

(c) if any seaman or apprentice belonging to any British ship registered in British India, and not being a Native Indian subject of Her Majesty, is discharged or left behind at any place in British India without full compliance as aforesaid, and becomes distressed and is relieved as aforesaid,

the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and, in case he should die before reaching home, for his burial, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid.

63. All such wages and expenses shall be recoverable with costs either from the master of such ship or from the person who is owner thereof for the time being, or in the case of an engagement for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made, in the same manner as other debts due to the Secretary of State for India in Council, or in the same manner and by the same form and process in which wages due to the seaman or apprentice would be recoverable by him.

Mode of recovering such wages and expenses.

64. The Local Government may from time to time, by notification in the official Gazette, authorize, either generally or specially, such persons as it thinks fit to sue for any such wages and expenses and recover the same.

Local Government may authorize persons to recover same.

And every person so authorized shall be entitled to sue and recover accordingly, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872, section 57, clause 7.

Such persons to be deemed persons filling a public office.

65. When any such wages and expenses are due to or in respect of a seaman or apprentice mentioned in section sixty-two, clause (c), they may, instead of being recovered by a person authorized under section sixty-four, be recovered by the Board of Trade in manner provided by the Merchant Shipping Act, 1854, section 213, and when so recovered shall be paid by

Board of Trade may recover such amount from master or owner in certain cases.

the

the said Board to the Secretary of State for India in Council.

What shall be evidence of distress and expenses incurred.

66. In all proceedings under this chapter, whether in India or elsewhere, the production of a certificate signed by the local authority by which any seaman or apprentice named therein was relieved, or any expenses were incurred, under this chapter, to the effect that such seaman or apprentice was in distress, and that such expenses were incurred in respect of such seaman or apprentice, shall be sufficient evidence that such seaman or apprentice was relieved, conveyed home or buried (as the case may be) at the expense of the revenues of India.

Power of Governor General in Council to make rules.

67. The Governor General in Council may, from time to time, make rules to determine under what circumstances and subject to what conditions seamen or apprentices may be relieved and provided with passages under this chapter and generally to carry out the provisions of this chapter.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

CHAPTER IV.

SHIP SURVEYORS.

Local Government to appoint examiners,

and to make rules as to qualification, &c., of ship surveyors.

68. The Local Government may, from time to time, appoint competent persons for the purposes of examining the qualifications of persons desirous of practising the profession of a ship surveyor at any port in the territories administered by such Government, and, subject to the control of the Governor General in Council, make rules—

(a) for the conduct of such examinations and the qualifications to be required,

(b) for the grant of certificates to qualified persons,

(c) for the fees to be paid for such examinations and certificates,

(d) for holding enquiries into charges of incompetency

petency and misconduct on the part of holders of such certificates, and

(e) for the suspension and cancelment of such certificates.

All such rules shall be published in the official Gazette, and shall thereupon have the force of law. Publication of rules.

69. No person shall, in any port in which there is a person exercising the profession of a ship surveyor and holding a certificate granted under section sixty-eight, exercise such profession in such port unless he holds a certificate granted under that section : No person to practise as ship surveyor unless qualified.

Provided that nothing herein contained shall prevent any person employed by Lloyd's Register of British and Foreign Shipping or Bureau Veritas from discharging any of the duties of such employment, or apply to any person specially exempted by the Local Government from the operation of this section. Surveyors of Lloyd's and Veritas.

70. Any person exercising the profession of a ship surveyor in contravention of the provisions of section sixty-nine shall be punished with fine not exceeding one thousand rupees, and shall be incapable of maintaining any suit for any fee or reward for anything done by him in such exercise of such profession. Penalty for practising as ship surveyor without certificate.

CHAPTER V.

RECEIVERS OF WRECK.

71. In this chapter "wreck" includes the following when found in the sea or any tidal water or on the shores thereof, that is to say :— "Wreck" defined.

goods which have been cast into the sea and then sink and remain under water ;

goods which have been cast or fall into the sea and remain floating on the surface ;

goods

goods which are sunk in the sea, but are attached to a floating object in order that they may be found again ;

goods which are thrown away or abandoned, and

a vessel abandoned without hope or intention of recovery.

Repeal of
chapter V of
Indian Ports
Act, 1875.

72. Chapter V of the Indian Ports Act, 1875, and section 5 of Act No. XIII of 1878 (*An Act to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act, 1875, and the Indian Ports Act, 1875*) are hereby repealed.

But nothing in this chapter shall be deemed to affect section 10 of the Indian Ports Act, 1875, or entitle any person to salvage in respect of any property recovered by creeping or sweeping in contravention of that section.

Appointment
of receivers.

73. The Local Government may, from time to time, by notification in the official Gazette, with the previous sanction of the Governor General in Council, appoint such persons as it thinks fit to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned, within such local limits as it may from time to time prescribe.

Persons so appointed shall be called receivers of wreck.

Rules to be
observed by
person find-
ing wreck.

74. Any person finding and taking possession of any wreck within any local limits for which a receiver of wreck has been so appointed, shall as soon as practicable—

if he be the
owner ;

(a) if he be the owner thereof, give the receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished ;

if he be not
the owner.

(b) if he be not the owner of such wreck, deliver the same to the receiver of wreck.

75. Whenever

75. Whenever any wreck is found by the receiver of wreck or has been delivered to him in accordance with the provisions of section seventy-four by any person, not being the owner thereof, the Government or such other person so delivering such wreck, as the case may be, shall be entitled to receive a reasonable sum for salvage, having regard to all the circumstances of the case.

Government or person finding wreck entitled to salvage.

Any dispute arising concerning the amount due under this section shall be determined by a Magistrate, upon application to him for that purpose by either of the disputing parties.

Disputes concerning amount of salvage.

76. The receiver of wreck shall, on taking possession of any wreck, publish a notification, in such manner and at such place as the Local Government may from time to time prescribe in this behalf, containing a description of the same and the time at which and the place where the same was found.

Notice to be given by receiver.

77. If after the publication of such notification the wreck is unclaimed,

Wreck may in certain cases be sold.

or if the person claiming the same fails to pay the amount due for salvage and for charges incurred by the receiver of wreck in respect thereof,

the receiver of wreck may sell such wreck by public auction, if of a perishable nature, forthwith, and if not of a perishable nature, at any period not less than six months after such notification as aforesaid.

78. On the realization of the proceeds of such sale, the amount due for salvage and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the balance shall be paid to the owner of the wreck, or, if no such person appear and claim the same, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Proceeds how applied.

Provided that he makes his claim within one year from the date of the sale.

79. Any person omitting to give notice of the finding of, or to deliver, any wreck to the receiver of

Penalty for failure to

wreck

give notice
of, or to de-
liver, wreck
to the re-
ceiver of
wreck.

wreck as required by section seventy-four shall be punished with fine which may extend to one thousand rupees, and in the case of omission to deliver any wreck, shall, in addition to such fine, forfeit all claim to salvage, and pay to the owner of such wreck if the same is claimed, or if the same is unclaimed to the Government, a penalty not exceeding twice the value of such wreck.

CHAPTER VI.

INSPECTION OF SHIPS WITH REGARD TO LIGHT AND FOG-SIGNALS.

Saving
clause.

80. Nothing in this chapter contained shall apply to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council or belonging to any foreign Prince or State.

Appointment
of inspectors
of lights and
fog-signals.

81. The Local Government may, from time to time, appoint persons to inspect, in any port, ships to which the regulations for preventing collisions at sea, issued under the provisions of the Merchant Shipping Act Amendment Act, 1862, or any other similar law for the time being in force, may apply, for the purpose of seeing that such ships are properly provided with lights and with the means of making fog-signals, in pursuance of such regulations or law, and may suspend or remove any person so appointed.

Every person so appointed shall in the port for which he is appointed have, for the purposes of such inspection, the powers given to detaining-officers by section eleven.

Notice of
deficiency to
be given to
master or
owner by
such inspect-
ors.

82. If any such person finds that any ship is not so provided, he shall give to the master or owner notice in writing pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same.

Ship not to
be cleared
by Customs-
collector till
inspector

83. Every notice so given shall be communicated in such manner as the Local Government may direct to the Customs-collector at any port from which such ship may seek to clear; and no Customs-collector to whom

whom such communication is made shall grant such ship a port-clearance or allow her to proceed to sea without a certificate under the hand of some person appointed as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog-signals in pursuance of the said regulations or law.

certifies it is properly provided with lights, &c.

CHAPTER VII.

MISCELLANEOUS.

84. Every offence punishable under chapter II, chapter III or chapter V may be tried in any district or presidency-town in which the offender is found, as well as in any district or presidency-town in which it might be tried under the law relating to criminal procedure for the time being in force.

Offences triable where offender found.

85. AND whereas it is also expedient to provide for the assistance of assessors in certain causes in Courts exercising Admiralty or Vice-Admiralty jurisdiction; it is hereby further enacted as follows:—

Assessors in causes of salvage, &c.

In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may if it think fit, and upon request of either party to such cause shall, summon to its assistance, in such manner as the Court may by rule, from time to time, direct, two competent assessors; and such assessors shall attend and assist accordingly.

Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct.

ACT No. VIII OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 12th March, 1880).

An Act to correct a clerical error in the Indian Limitation Act, 1877.

IN the second schedule to the Indian Limitation Act, 1877, No. 171A, column three, for the words "The date of the plaintiff's death," the words "The sixtieth day from the date of the plaintiff's death" shall be, and be deemed to have always been, substituted.

[*Printed one anna.*]

ACT No. IX OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 30th April, 1880.)

An Act to amend the Bombay Civil Courts Act, 1869.

WHEREAS, it is expedient to empower the Governor of Bombay in Council to fix and, from time to time, to alter the local limits of the ordinary jurisdiction of the Subordinate Judges appointed under the Bombay Civil Courts Act, 1869; It is hereby enacted as follows:—

1. This Act may be called "The Bombay Civil Courts Act, 1880:—

and it shall come into force at once.

2. In the said Act, after section 22, the following section shall be inserted:—

"22A. The Governor of Bombay in Council may, by notification in the official Gazette, fix, and, by a like notification, from time to time alter, the local limits of the ordinary jurisdiction of the Subordinate Judges."

3. All orders issued by the Governor of Bombay in Council previous to the passing of this Act, fixing or altering the local limits of the jurisdiction of a Subordinate Judge, shall be deemed to have been issued in accordance with law.

Preamble.

Short title.

Commencement.

Insertion of a new section after section 22 of the Bombay Civil Courts Act.

Power to fix local limits of jurisdiction of Subordinate Judges.

Limits already fixed to be deemed to have been fixed according to law.

[Price one anna.]

ACT No. X OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 21st May, 1880).

An Act to declare the law in force in certain lands annexed to the Multán District.

WHEREAS the lands occupied by the Indus Valley State Railway, and the works, premises and stations thereof, within the limits of the Baháwalpur State, which have been ceded to the British Government in full sovereignty by that State, have been declared by the Governor General in Council to be subject to the Lieutenant-Governorship of the Panjáb, and have by the Lieutenant-Governor of the Panjáb been annexed to the Multán District; Preamble.

and whereas it is expedient that the law in force in the said lands should be the same as the law in force in the Multán District; It is hereby enacted as follows:—

1. All enactments which, on the second day of September, 1879, were in force in the Multán District and not in the said lands shall be deemed to have come into force in the said lands on that day. Enactments in force in Multán District to apply.

[Price one anna.]

ACT No. XI OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 2nd July, 1880).

An Act to provide for the appointment of an Additional Recorder of Rangoon, and for other purposes.

WHEREAS it is expedient to provide for the temporary appointment, from time to time, of an Additional Recorder to assist the Recorder of Rangoon; Preamble

and whereas it is also expedient to remove certain doubts which exist as to the jurisdiction of the said Recorder under section sixty-two of the Burma Courts Act, 1875; It is hereby enacted as follows:—

1. This Act may be called “The Burma Courts Act, 1880”; Short title

and it shall come into force at once.

Commence-
ment.

2. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, appoint, to be an Additional Recorder and to sit as such in the Court of the Recorder of Rangoon, such person as he thinks fit, being a Barrister of not less than five years’ standing, or a person who has for at least three years served as a District Judge, or exercised the like powers as those of a District Judge. Appointment
of Additional
Recorder.

Every person so appointed shall hold his office during the pleasure of the Governor General in Council.

3. Every Additional Recorder appointed under section two shall sit at such of the places at which, under the said Act, the Recorder’s Court can be held, Cases to be
disposed of
by Additional
Recorder.

as

[Price one anna and six pies.]

as the Chief Commissioner of British Burma, from time to time, directs, and shall dispose of such cases, now or hereafter pending in the said Recorder's Court under any enactment for the time being in force, as the said Chief Commissioner or Recorder may, from time to time, direct, and in the disposal of such cases shall administer the same law, follow the same procedure, exercise the same powers and use the same seal as would be administered, followed, exercised and used by the said Recorder in like cases.

All decrees, orders and sentences made or passed in such cases by any such Additional Recorder shall, for the purposes of the law relating to appeals, references and revision, be deemed to be made or passed by the Recorder.

The Chief Commissioner may at any time cancel any direction given under this section requiring the Additional Recorder to dispose of a case.

Additional Recorder to sit in Special Court in place of Recorder.

4. The Additional Recorder shall also sit in the place of the Recorder as a member of the Special Court established under chapter V of the said Act, for the disposal of such cases as the Chief Commissioner directs, and shall, while so sitting, take precedence according to the same rule as the Recorder, and exercise all the powers and perform all the duties which under the said Act may be exercised and performed by the Recorder as a member of such Special Court.

Section 80 of the Burma Courts Act to apply when Additional Recorder sits in Special Court.

5. Whenever, in cases tried by the Judicial Commissioner and Additional Recorder of Rangoon sitting together as a Special Court without a Commissioner, a difference of opinion arises, the rules prescribed by section eighty of the said Act shall be observed, the words "Additional Recorder" being substituted for the word "Recorder" wherever it occurs in the said rules.

Amendment of section 62 of the Burma Courts Act, 1875.

6. For the first paragraph of section sixty-two of the said Burma Courts Act, 1875, the following paragraph shall be substituted:—

"Notwithstanding anything hereinbefore contained,

1880.]

Burma Courts.

tained, the Recorder shall have all the powers of a High Court, under the Code of Criminal Procedure, in respect of offences committed by European British subjects and persons charged jointly with European British subjects within British Burma."

ACT No. XII OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 9th July, 1880).

An Act for the appointment of persons to the office of Káží.

WHEREAS by the preamble to Act No. XI of 1861 (*An Act to repeal the law relating to the offices of Hindú and Muhammadan Law Officers and to the offices of Káží-ul-Kuzáat and of Káží, and to abolish the former offices*) it was (among other things) declared that it was inexpedient that the appointment of the Káží-ul-Kuzáat, or of City, Town or Pargana Kázís should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed; and whereas by the usage of the Muhammadan community in some parts of British India the presence of Kázís appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Káží; It is hereby enacted as follows:—

1. This Act may be called “The Kázís’ Act, 1880”; Short title.

and it shall come into force at once.

It extends, in the first instance, only to the territories administered by the Governor of Fort Saint

Commence-
ment.
Local extent.

George

[*Price one anna and six pies.*]

George in Council. But any other Local Government may, from time to time, by notification in the official Gazette, extend it to the whole or any part of the territories under its administration.

Power to
appoint
Kázís for
any local
area

2. Whenever it appears to the Local Government that any considerable number of the Muhammadans resident in any local area desire that one or more Kázís should be appointed for such local area, the Local Government may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kázís for such local area.

If any question arises whether any person has been rightly appointed Kází under this section, the decision thereof by the Local Government shall be conclusive.

The Local Government may, if it thinks fit, suspend or remove any Kází appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the office, or who refuses or becomes in the opinion of the Local Government unfit, or personally incapable, to discharge the duties of the office.

Náib Kázís.

3. Any Kází appointed under this Act may appoint one or more persons as his náib or náibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any náib so appointed.

When any Kází is suspended or removed under section two, his náib or náibs (if any) shall be deemed to be suspended or removed, as the case may be. 4

Nothing in
Act to confer
judicial or
administrative
powers, or

4. Nothing herein contained, and no appointment made hereunder, shall be deemed—

(a) to confer any judicial or administrative powers on any Kází or Náib Kází appointed hereunder; or

(b)

- (b) to render the presence of a Kází or Náib Kází necessary at the celebration of any marriage or the performance of any rite or ceremony; or to render the presence of Kází necessary; or
- (c) to prevent any person discharging any of the functions of a Kází. to prevent any one acting as Kází.

THE VACCINATION ACT, 1880.

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[*Price three annas and six pacs.*]

ACT No. XIII OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 9th July 1880).

An Act to give power to prohibit inoculation, and to make the vaccination of children compulsory, in certain Municipalities and Cantonments.

WHEREAS it is expedient to give power to prohibit inoculation, and make the vaccination of children compulsory, in certain municipalities and cantonments; It is hereby enacted as follows:— Preamble.

1. This Act may be called “The Vaccination Act, 1880”: and Short title.

it shall apply only to such municipalities and cantonments situate in the territories administered respectively by the Lieutenant-Governors of the North-Western Provinces and the Panjáb, and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Assam, Ajmer and Coorg as it may be extended to in manner hereinafter provided. Application.

2. In this Act unless there is something repugnant in the subject or context,— Interpretation-clause.

(1) the expression “Municipal Commissioners” means a body of Municipal Commissioners or a Municipal Committee constituted under the provisions of any enactment for the time being in force: “Municipal Commissioners”.

(2) “parent” means the father of a legitimate child and the mother of an illegitimate child: “parent”.

(3) “guardian” includes any person who has accepted or assumed the care or custody of any child: “guardian”.

(4) “unprotected child” means a child who has not been protected from small-pox by having had that disease “unprotected child”.

disease either naturally or by inoculation, or by having been successfully vaccinated, and who has not been certified under this Act to be insusceptible to vaccination :

" inoculation "

(5) " inoculation " means any operation performed with the object of producing the disease of small-pox in any person by means of variolous matter :

vaccination-

(6) " vaccination-circle " means one of the parts into which a municipality or cantonment has been divided under this Act for the performance of vaccination :

" vaccinator "

(7) " vaccinator " means any vaccinator appointed under this Act to perform the operation of vaccination, or any private person authorized by the Local Government in manner hereinafter provided to perform the same operation ; and includes a " Superintendent of vaccination " :

" vaccination-season "

(8) " vaccination-season " means the period from time to time fixed by the Local Government for any local area under its administration by notification in the official Gazette, during which alone vaccination may be performed under this Act.

Extension of Act to municipalities.

3. A majority in number of the persons present at a meeting of the Municipal Commissioners specially convened in this behalf may apply to the Local Government to extend this Act to the whole or any part of a municipality, and thereupon the Local Government may, if it thinks fit, by notification published in the official Gazette, declare its intention to extend this Act in the manner proposed.

Any inhabitant of such municipality or part thereof who objects to such extension may, within six weeks from the date of such publication, send his objection in writing to the Secretary to the Local Government, and the Local Government shall take such objection into consideration. When six weeks from the said publication have expired, the Local Government, if no such objections have been sent as aforesaid, or (when such objections have been so sent)

if

if in its opinion they are insufficient, may by like notification effect the proposed extension.

4. The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, extend this Act to the whole or any part of a military cantonment. Extension to cantonments.

5. The Local Government may, by notification in the official Gazette, withdraw any local area in a municipality, or with the previous sanction of the Governor General in Council, any local area in a cantonment, from the operation of this Act. Power to withdraw local area from operation of Act.

6. In any local area to which the provisions of this Act apply, inoculation shall be prohibited; and no person who has undergone inoculation shall enter such area before the lapse of forty days from the date of the operation, without a certificate from a medical practitioner, of such class as the Local Government may from time to time by written order authorize to grant such certificates, stating that such person is no longer likely to produce small-pox by contact or near approach. Prohibition of inoculation.
Inoculated persons not to enter, without certificate, local area subject to Act.

7. Every local area to which this Act applies shall be a vaccination-circle, or shall in manner hereinafter provided be divided into a number of such circles; Vaccination-circles.

one or more vaccinators shall be appointed in manner hereinafter provided for each such circle; and Vaccinators;

one or more Superintendents of vaccination shall be appointed in manner hereinafter provided for each such local area. Superintendent of vaccination.

8. The Local Government may by written license authorize private vaccinators to perform vaccination in any vaccination-circle, and may suspend or cancel any such license. Private vaccinators

9. When any unprotected child, having attained the age of six months, has resided for a period of one month during the vaccination-season in any local area to which the provisions of this Act apply, and has not at the expiration of such period attained the age, Unprotected children to be vaccinated.
if

if a boy, of fourteen years, and if a girl, of eight years, the parent or guardian of such child shall take it, or cause it to be taken, to a vaccinator to be vaccinated, or send for a vaccinator to vaccinate it.

Vaccinator
to vaccinate
children, or
deliver
certificates of
postpone-
ment.

Such vaccinator shall vaccinate the child and deliver to its parent or guardian a memorandum stating the date on which the vaccination has been performed and the date on which the child is to be inspected in order to ascertain the result of the operation, or shall, if he finds such child in a state unfit for vaccination, deliver to its parent or guardian a certificate under his hand to the effect that the child is in a state unfit for vaccination for the whole or part of the current vaccination-season.

Inspection
after vaccin-
ation.

10. The parent or guardian of every child which has been vaccinated under section nine shall, on the date of inspection stated in the memorandum, take the child, or cause it to be taken, to a vaccinator for inspection, or get it inspected at his own house by a vaccinator ; and

such vaccinator shall then append to the memorandum a certificate stating that the child has been inspected and the result of such inspection.

Procedure
when vaccin-
ation is
successful

11. When it is ascertained at the time of inspecting a child under section ten that the vaccination has been successful, a certificate shall be delivered by the vaccinator to the parent or guardian of such child to that effect, and such child shall thereafter be deemed to be protected.

Procedure
when vaccin-
ation is
unsuccessful.

12. When it is ascertained as aforesaid that the vaccination has been unsuccessful, the parent or guardian shall, if the vaccinator so direct, cause the child to be forthwith again vaccinated and subsequently inspected in manner hereinbefore provided.

Procedure
when child is
unfit for
vaccination.

13. A certificate granted under section nine showing the unfitness of a child for vaccination shall remain in force for the period stated therein, and on the termination of that period, or, if that period terminates after the vaccination-season is over, when the next vaccination-season begins, the parent or guardian

guardian of such child shall take the child, or cause it to be taken, to a vaccinator to be vaccinated, or procure its vaccination at his own house by a vaccinator :

Provided that if the child is still found to be in a state unfit for vaccination, the certificate granted under section nine shall be renewed.

Renewal of postponement certificates

14. If the Superintendent of vaccination is of opinion that a child which has been three times unsuccessfully vaccinated is insusceptible of successful vaccination, he shall deliver to the parent or guardian of such child a certificate under his hand to that effect ; and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated.

Certificates of insusceptibility of successful vaccination.

15. The vaccination of a child shall ordinarily be performed with such lymph as may be prescribed by the rules to be made under this Act :

What lymph to be used.

Provided that,

1st, if animal-lymph is so prescribed and the parent or guardian of any child desires that such child shall be vaccinated with human lymph, it shall be so vaccinated ; and

2nd, if in any local area in which animal-lymph is procurable human lymph is so prescribed, and the parent or guardian of any child desires that such child should be vaccinated with animal-lymph, and tenders to the vaccinator the amount of such fee, not exceeding one rupee, as may be fixed by such rules in this behalf, such child shall be so vaccinated.

16. No fee shall be charged by any vaccinator except a private vaccinator to the parent or guardian of any child for any of the duties imposed on such vaccinator by or under the provisions of this Act :

No fee to be charged except by private vaccinator.

Provided that it shall be lawful for a vaccinator to accept a fee for vaccinating a child by request of the parent or guardian elsewhere than in the circle for which such vaccinator is appointed.

Proviso.

17. The Superintendent of vaccination, in addition to the other duties imposed on him by or under

Duties of Superintendent of vaccination.

the

the provisions of this Act, shall ascertain whether all unprotected children, under the age of fourteen years if boys, and under the age of eight years if girls, within the local area under his superintendence have been vaccinated; and, if he has reason to believe that the parent or guardian of any such child is bound by the provisions hereinbefore contained to procure the vaccination of such child or to present it for inspection, and has omitted so to do, he shall personally go to the house of such parent or guardian, and there make enquiry, and shall, if the fact is proved, forthwith deliver to such parent or guardian, or cause to be affixed to his house, a notice requiring that the child be vaccinated, or (as the case may be) that it be presented for inspection, at a time and place to be specified in such notice.

Notice to parent or guardian neglecting to comply with Act.

Order by Magistrate when notice not complied

18. If such notice is not complied with, the Superintendent of vaccination shall report the matter to the Magistrate of the District, or such Magistrate as the Local Government or the Magistrate of the District may from time to time appoint in this behalf; and the Magistrate receiving such report shall summon the parent or guardian of the child and demand his explanation, and shall, if such explanation is not satisfactory, make an order in writing directing such parent or guardian to comply with the notice before a date specified in the order.

Procedure when order not obeyed.

If on such date the order has not been obeyed, the Magistrate shall summon the parent or guardian before him, and, unless just cause or excuse is shown, shall deal with the disobedience as an offence punishable under section twenty-two.

Magistrate to be non-official Natives.

The Magistrates appointed under this section shall, as far as is conveniently practicable, be Natives of India, and not paid servants of the Government.

Power to make rules for municipalities.

19. When this Act has been applied to any municipality or any part thereof, the Municipal Commissioners may, from time to time, make rules consistent with this Act for the proper enforcement of this Act within the limits to which it applies. Such rules shall be made in the manner in which, under the law

for

for the time being in force, the Commissioners make rules or bye-laws for the regulation of other matters within the limits of the municipality, and shall, when confirmed by the Local Government and published in the official Gazette, have the force of law :

Provided that the Local Government may at any time rescind or modify any such rule.

20. When this Act has been applied to any cantonment or any part thereof, the Local Government may, from time to time, subject to the control of the Governor General in Council, make such rules.

Power to make rules for cantonments.

21. The rules to be made for any local area under sections nineteen or twenty may, among other matters, provide for—

What rules under sections 19 and 20 may provide for

(a) the division of such local area into circles for the performance of vaccination ;

(b) the appointment of a place in each vaccination-circle as a public vaccine-station, and the posting of some distinguishing mark in a conspicuous place near such station ;

(c) the qualifications to be required of public vaccinators and Superintendents of vaccination ;

(d) the authority with which their appointment, suspension and dismissal shall rest ;

(e) the time of attendance of public vaccinators at the vaccine-stations, and their residence within the limits of the vaccination-circles ;

(f) the distinguishing mark or badge to be worn by them ;

(g) the amount of fee chargeable by private vaccinators, and their guidance generally in the performance of their duties ;

(h) the facilities to be afforded to people for procuring the vaccination of their children at their own houses ;

(i) the grant and form of certificates of successful vaccination, of unfitness for vaccination or of insusceptibility of vaccination ;

(j) the

(*j*) the nature of the lymph to be used and the supply of a sufficient quantity of such lymph ;

(*k*) the fee to be paid for vaccination with animal-lymph under section fifteen ;

(*l*) the fee to be paid to a public vaccinator for vaccinating a child beyond the vaccination-circle at the request of the parent or guardian of the said child ;

(*m*) the preparation and keeping of registers showing—

the names of children born in such local area on or after the date of the application of this Act ;

the names of unprotected children born in such local area previous to the application of this Act, and who are, at the time this Act is applied, under the age of fourteen years if boys, and of eight years if girls ;

the names of unprotected boys and girls respectively under those ages brought within such local area at any time after the application of this Act and who have resided there for a month ;

the result of each vaccination or its postponement, and the delivery of certificates, if any ;

(*n*) the assistance to be given by the Municipal Commissioners and municipal servants in the preparation of these registers, and in other matters ; and

(*o*) the preparation of vaccination-reports and returns.

Punishment
of offence

22. Whoever commits any of the undermentioned offences (that is to say) :—

(*a*) violates the provisions of section six,

(*b*) neglects without just excuse to obey an order made under section eighteen,

(*c*) breaks any of the rules made under section nineteen or twenty, or

(*d*) neglects without just cause to obey an order made under section eighteen after having been previously

viously convicted of so neglecting to obey a similar order made in respect of the same child,

shall be punished as follows (that is to say) :—

in the case of the offence mentioned in clause (a), with simple imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both ;

in the case of the offences mentioned in clauses (b) and (c), with fine which may extend to fifty rupees ; and

in the case of the offence mentioned in clause (d), with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. lo,

23. The amount of all fees and fines realized, and the amount of all expenditure incurred, under this Act in any municipality shall respectively be credited to and paid from the municipal fund.

Municipal funds to receive fines and meet expenditure.

ACT No. XIV OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 3rd November, 1880.)

An Act to provide for certain matters in connection with the taking of the Census.

WHEREAS it has been determined to take a census of British India, and it is expedient to provide for certain matters in connection with the taking of such census; It is hereby enacted as follows:—

Preamble.

1. This Act may be called “The Indian Census Act, 1880,” and shall come into force on the passing thereof.

Short title.
Commencement.

2. This section and sections three, four and thirteen extend to the whole of British India.

Local extent.

The remaining sections extend only to such parts of British India as the Local Government may, from time to time, by notification in the official Gazette, direct.

3. The Local Government may appoint any person by name or in virtue of his office to take, or aid in or supervise the taking of, the census within any specified local area.

Appointment of Census-officers.

Persons so appointed shall be called “Census-officers.”

The Local Government may delegate to such authority as it thinks fit the power conferred by this section.

4. A declaration in writing, signed by any officer authorized by the Local Government in this behalf, that any person has been duly appointed a Census-officer for any local area shall be conclusive proof of such appointment.

Proof of appointment of Census-officer.

All

Census-officers to be deemed public servants

All Census-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Duties of Census-officers how to be discharged in certain cases.

5. (a) Every military or naval officer in command of any body of men belonging to Her Majesty's military or naval forces or of any vessel of war,

(b) every person (except a pilot or harbour-master) having charge or control of a vessel,

(c) every person in charge of a lunatic asylum, hospital, workhouse, prison, reformatory or lock-up, or of any public, charitable, religious or educational institution,

(d) every keeper or manager of any saráí, hotel, boarding-house, lodging-house or club, and

(e) every occupant of immoveable property having at the time of taking the census not less than fifty persons employed under him on or in such property,

shall, if so required by the Magistrate of the District, or, in the towns of Calcutta, Madras and Bombay, by such officer as the Local Government may appoint in this behalf, perform such of the duties of a Census-officer in relation to the persons who at the time of taking the census are under his command or charge, or inmates of his house or present on or in such property, as such Magistrate or officer may, by an order written, printed or lithographed, direct.

All the provisions of this Act relating to Census-officers shall apply (so far as they are applicable) to all such persons while performing such duties; and any person refusing or neglecting to perform any duty which he is directed under this section to perform shall be deemed to have committed an offence under section 187 of the Indian Penal Code.

Power of Magistrate of District to call upon certain persons to give assistance.

6. The Magistrate of the District may, by an order written, printed or lithographed, call upon all owners and occupiers of land, tenure-holders, farmers, assignees of land-revenue and lessees of fisheries under the Burma Fisheries Act, 1875, in his district, or their agents, and upon all members of pancháyats appointed

, appointed in his district under Bengal Act No. VI of 1870 (*to provide for the appointment, dismissal and maintenance of Village Chaukidárs*), to give such assistance as he needs towards the taking of a census of the persons who are at the time of taking the census on the lands of such owners, occupiers, holders, farmers and assignees, within the limits of such fisheries or in the villages for which such pancháyats are appointed, as the case may be.

Such order shall specify the nature of the assistance required, and such owners, occupiers, holders, farmers, assignees, lessees, or their agents, and the members of such pancháyats shall be bound to obey it.

7. Every Census-officer may ask all such questions of all persons within the limits of the local area for which he is appointed as, by instructions issued in this behalf by the Local Government and published in the official Gazette, he may be directed to ask.

Cen-
suses em-
powered to
ask ques-
tions.

8. Every person of whom any question is asked under section seven shall be legally bound to answer such question to the best of his knowledge or belief:

Obligation to
answer ques-
tions.

Provided that no person shall be bound to state the name of any female member of his household: and that no woman shall be bound to state the name of her husband or deceased husband.

9. Every person occupying any house, enclosure, vessel or other place shall allow the Census-officers such access thereto as they may require for the purposes of the census, and as, having regard to the customs of the country, may be reasonable.

Occu-
pied house, &c., to
allow access.

10. Subject to such orders as the Local Government may issue in this behalf, any Census-officer may leave, or cause to be left, at any dwelling-house within the local area for which he is appointed, a schedule for the purpose of being filled up by the occupier of such house or of any specified part thereof with such particulars as the Local Government may direct regarding the persons present in such house or part at the time of taking the census.

Occupier of
house to fill
up schedule

When

When any such schedule has been so left, the occupier of the house or part to which it relates shall fill up the same to the best of his knowledge or belief, so far as regards the persons present in such house or part, as the case may be, at the time aforesaid, and shall sign his name thereto, and, when so required, shall deliver the schedule so filled up and signed to the Census-officer or to such person as he may direct.

Penalty for failing to fill up schedule, &c., or making false return

Any occupier of a dwelling-house or part thereof who knowingly and without sufficient cause fails to comply with the provisions of this section, or makes any false return hereunder, shall be punished for every such offence, if it does not amount to an offence within the provisions of the Indian Penal Code, with fine which may extend to fifty rupees.

Penalty for misconduct of Census-officers

11. Any Census-officer who, knowingly and without sufficient cause, disobeys the instructions published by the Local Government under section seven, puts any offensive or improper question, or makes any false return, shall be punished for every such offence, if it does not amount to an offence within the provisions of the Indian Penal Code, with fine which may extend to fifty rupees.

Jurisdiction in prosecutions.

12. The Local Government may, by notification in the official Gazette,

(a) declare before what classes of Magistrates prosecutions under this Act, or for neglecting or refusing to do anything required by this Act to be done, may be instituted; and

(b) direct that no such prosecution shall be instituted except with its previous sanction, or with the previous sanction of some officer authorized by it in this behalf.

Unless and until a notification is published under clause (a) of this section, all prosecutions under this Act shall, in the towns of Calcutta, Madras and Bombay, be instituted before a Presidency Magistrate, and elsewhere, before the Magistrate of the District.

Records of

13. Notwithstanding anything to the contrary contained

contained in the Indian Evidence Act, 1872, no entry in any book, register or record made by a Census-officer in the discharge of his duty as such officer shall be admissible as evidence in any civil proceeding or any proceeding under chapter forty or chapter forty-one of the Code of Criminal Procedure or chapter eighteen of the Presidency Magistrates' Act, 1877.

*census not
admissible in
evidence in
certain pro-
ceedings.*

ACT No. XV OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 3rd November, 1880.)

An Act to amend the Bombay Revenue Jurisdiction Act, 1876.

WHIEREAS it is expedient to amend the Bombay Revenue Jurisdiction Act, 1876, in manner hereinafter appearing, and to make further provision for the recovery of certain advances made in the territories administered by the Governor of Bombay in Council for purposes other than those specified in the Land Improvement Act, 1871; It is hereby enacted as follows:—

1. This Act may be called “The Bombay Revenue Jurisdiction Act, 1880”; and it shall come into force at once.

2. Sections eight, nine, ten and seventeen of the said Bombay Revenue Jurisdiction Act, 1876, are hereby repealed:

Provided that the repeal hereby effected, of the first clause of the said section seventeen, shall not operate in any Scheduled District, unless and until the Bombay Land-revenue Code, 1879, has been extended to such district:

Provided also that the repeal of the second clause of the said section seventeen shall not be deemed to render invalid or illegal anything made valid or legal by such clause.

3. To section thirty-two of the Bombay Civil Courts Act, No. XIV of 1869, as amended by section fifteen of the said Bombay Revenue Jurisdiction Act, 1876, the following words shall be added:—

“ Provided

[Price one anna and three pies.]

Preamble.

Short title.
Commencement.

Repeal of
sections 8, 9,
10 and 17 of
Act No. X
of 1876.

Addition to
section 32 of
Act No. XIV
of 1869 as
amended by
section 15 of
Act No. X of
1876.

Bombay Revenue Jurisdiction. [ACT XV, 1880.]

Proviso.

“Provided that nothing in this section shall be deemed to apply to any suit merely because—

“(a) a municipal corporation constituted under Bombay Act No. VI of 1873, or any other enactment for the time being in force, is a party to such suit and an officer of Government is in his official capacity a member of such corporation, or

“(b) an officer of a Court appointed under the Code of Civil Procedure, section 456, last paragraph, or selected under Act No. XX of 1864 (*for making better provision for the care of the persons and property of minors in the Presidency of Bombay*), section 9, is, in virtue of such appointment or selection, a party to such suit.”

Governor in Council to make rules as to certain advances for purposes other than those specified in Act No. XXVI of 1871.

4. The Governor of Bombay in Council may, from time to time, with the previous sanction of the Governor General in Council, prescribe rules as to advances to be made in the territories administered by the said Governor in Council to holders (as defined in section 3 (11) of the Bombay Land-revenue Code, 1879,) of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Act, 1871, but connected with agricultural objects.

All such rules shall be published in the local official Gazette.

Recovery of such advances.

5. Every advance for any such purpose which may heretofore have been made by or on behalf of the Government in the said territories, and every advance which may hereafter be made under such rules, shall, when it becomes due, be recoverable, with the interest (if any) accrued due thereon, from the person to whom such advance was made, or from any person who has become surety for the repayment thereof, as if it were an arrear of land-revenue due by the person to whom the advance was made or by his surety.

ACT No. XVI OF 1880.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 26th December, 1880.)

An Act to regulate the Traffic on the Madras Irrigation and Canal Company's Canal.

WHEREAS, by the twenty-seventh clause of an Preamble.

Indenture made on the third day of June, one thousand eight hundred and sixty-three, between the Secretary of State for India in Council of the one part, and the Madras Irrigation and Canal Company (hereinafter referred to as "the Company") of the other part, it was, amongst other things, provided that the Company should be authorized and empowered to charge such tolls for navigation, and such fares or rates for the conveyance of passengers, animals and goods, as should not exceed the rates, tolls or fares which should be defined and sanctioned by an Act of the Indian Legislature; and that the Company should not in any case charge any higher tolls, fares or rates whatsoever; and whereas it is expedient to define and sanction, for the purposes of the said clause, fares and rates for the conveyance of passengers, animals and goods;

And whereas it is also expedient to empower the Company to make rules for the conveyance of passengers, animals and goods upon, and the use, management and working of, its canal; It is hereby enacted as follows:—

1. This Act may be called "The Madras Irrigation and Canal Company's Act, 1880;" Short title.

and it shall come into force at once.

Commencement.

2. The

[*Price two annas.*]

Madras Irrigation Company's Canal. [ACT XVI

Fares and rates for conveyance of passengers and goods.

2. The fares and rates specified in the schedule hereto annexed shall be deemed to be the fares and rates defined and sanctioned for the purposes of the said clause.

Company empowered to make working rules for its canal

3. The Company may, from time to time, make rules for the following purposes, that is to say :—

(a) for licensing vessels (other than those of the Company) to navigate the canal and for registering vessels so licensed and denoting upon each its carrying capacity ;

(b) for fixing the maximum number of passengers or animals, and the maximum amount of goods, which vessels navigating the canal may carry ; and

(c) generally for regulating the traffic upon, and the use and management of all vessels upon, the canal.

Penalty for breach of rules.

4. Any such rule may contain a provision that any person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to one month.

Notification of rules.

5. All such rules shall, when sanctioned by the Governor of Fort St. George in Council and published in the *Fort St. George Gazette*, have the force of law.

Power to cancel rules.

The said Governor in Council may at any time cancel any such rule.

Copy and translation of Act, &c., to be shown at stations and on vessels.

6. A copy of this Act and the rules made hereunder, and of the Time-table and Tariff of Charges which may from time to time be observed for the Company's vessels navigating the canal, shall be exhibited, both in English and in Telugu, in some conspicuous place at each station of the canal, and in each vessel employed by the Company in conveying passengers, animals or goods over the canal.

Penalty for failure to exhibit copy and translation as required by section 6.

7. Any servant of the Company in charge of any such station or vessel at or in which the provisions of section six are not complied with shall be punished with fine which may extend to ten rupees ; and the
Company

1880.] *Madras Irrigation Company's Canal.*

Company shall forfeit to Government the sum of fifty rupees for every day during which such provisions are not complied with at or in any such station or vessel.

8. Any person committing any offence against this Act or the rules made under it shall be triable for such offence at any place at which he may be, or which the Governor of Fort St. George in Council may, from time to time, by notification in the official Gazette, direct, as well as in any other place in which he might be tried under any law for the time being in force.

9. Nothing in this Act shall be deemed to prevent any person from being arrested, prosecuted or punished under any other law for any act or omission which constitutes an offence against this Act or the rules made under it :

Provided that no person shall be punished twice for the same offence.

THE SCHEDULE.

(See section 2.)

Fares and Rates.

PASSENGERS.

	Pies.
First class, per passenger, per mile or fraction of a mile	14.4
Second class, per ditto, ditto	5.6
Third class, per ditto, ditto { Mail (fast)	3.2
{ Ordinary	2.0

ANIMALS.

				Pies.
A horse or mule taken singly, per mile or fraction of a mile	...	..	...	14-1
				Annas.
Cattle, horses and mules, per 10 or fraction of 10, per ditto	...	...	...	6-0
				Calves

THE SCHEDULE —*continued.*

Annas.

Calves needing only half the space of a cow, to be reckoned as half.

Sheep, goats and pigs, per 60 or fraction of 60,				
per ditto ...	...	...	...	6·0

Asses, half the rates for horses.

N. B.—Dogs, if conveyed at all, will not be charged for, no accommodation being provided for them.

Elephants and camels will not be conveyed at all.

Goods.

Heavy Goods, i.e., Goods weighing above 150 lbs.

Pies.

First class (which includes all articles for the time being comprised in the special and first classes, Madras Railway,) per ton, per mile or fraction of a mile	7·2
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Second class (which includes all articles for the time being comprised in the second and third classes, Madras Railway,) per ditto, ditto	12·8
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Third class (which includes all articles for the time being comprised in the fourth and fifth classes, Madras Railway,) per ditto, ditto	24·0
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Fractions of a ton will be charged for proportionately, fractions of 20 lbs. being reckoned as 20 lbs.

N. B.—Carriages or vehicles will not be conveyed.



Parcels.

1880.] *Madras Irrigation Company's Canal.*

Parcels.

DISTANCE.	EXCLUSIVE OF COLLECTION AND DELIVERY.													
	10 lbs. and under.	Above 10 and not above 20 lbs.	Above 20 and not above 40 lbs.	Above 40 and not above 60 lbs.	Above 60 and not above 80 lbs.	Above 80 and not above 100 lbs.	Above 100 and not above 120 lbs.	Above 120 and not above 140 lbs.	Above 140 and not above 160 lbs.	Above 160 and not above 180 lbs.				
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
50 miles and under	0 2 6	0 3 9	0 5 0	0 6 3	0 7 6	0 8 9	0 10 0	0 11 3	0 12 6	0 13 9				
Above 50 and not above 100 miles.	0 5 0	0 7 6	0 10 0	0 12 6	0 15 0	1 1 6	1 4 0	1 6 6	1 9 0	1 11 6				
" 100 "	0 7 6	0 11 3	0 15 0	1 2 0	1 6 6	1 10 3	1 14 0	2 1 9	2 5 6	2 9 3				
" 150 "	0 10 0	0 15 0	1 4 0	1 9 0	1 14 0	2 3 0	2 8 0	2 13 0	3 2 0	3 7 0				

The rates for bread, meat, fish, poultry (dead or alive), ice, fruit, plants, vegetables and flowers will be half parcel rates as shown above.

ACT No. 1 OF 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 1st January, 1881.)

An Act for the determination of claims to Táj Mahal's pension.

WHEREAS, by a treaty dated the 24th Shabán 1244, Preamble.
Hijri, corresponding with the first day of March, 1829, and made between His Majesty the King of Oadh and the Government of the Hon'ble the East India Company, it was (amongst other things) agreed that a certain pension therein specified should be paid by the English Government to one Nawáb Táj Mahal therein named, and that if she should die leaving an heir or heirs the English Government might at its election continue as before such pension to her heirs, or make over to them the principal sum proportionate to such pension according to the rate thereinbefore mentioned ;

and whereas the said Táj Mahal is now dead and doubts exist as to who are her heirs, and it is therefore expedient to provide for the appointment of a person to represent her estate for the purpose of receiving such pension ;

and whereas the Secretary of State for India in Council is desirous of making over to the persons entitled to receive the said pension the principal sum proportionate thereto as provided in the said treaty, and it is expedient to empower the said Secretary of State in Council to capitalize the said pension pending the appointment

appointment of a person as aforesaid; It is hereby enacted as follows :—

Short title.
Commence-
ment.

1. This Act may be called “Tāj Mahal’s Pension Act, 1881”; and it shall come into force at once.

Certificate to
be obtained
by applica-
tion to the
District
Court.

2. Any person considering himself entitled to the said pension, or any portion thereof, may apply in writing to the Court of the District Judge of Lucknow (hereinafter called the District Court) for a certificate authorizing him to receive the same.

Form of
application

The application shall be in such form and shall contain such particulars as the Governor General in Council may from time to time, by rules to be published in the *Gazette of India*, direct.

Publication
of application
and notice
to persons
desiring to
oppose it.

3. The District Court shall fix a day for hearing the application, and shall cause to be stuck up in the court-house, and otherwise published or made known at the expense of the applicant, in such manner as it thinks fit, a copy of the application, with a notice stating the time and place at which it will be heard, and calling upon all persons claiming to have a better right than the applicant to the grant of the certificate to come in and oppose the application.

Procedure at
hearing when
no opposition.

4. On the day so fixed, or any subsequent day to which the Court may adjourn the hearing, the Court shall, if no person claiming to have a better right than the applicant to the grant of the certificate is present, hear the application; and if, after recording the evidence produced by the applicant in support of his claim, and making such further enquiry (if any) as it thinks necessary, the Court is of opinion that the applicant has established his claim, it shall make an order for granting him a certificate.

In the event of the applicant not having, in the opinion of the Court, established his claim, it shall make an order dismissing his application.

Procedure in
case of oppo-
sition.

5. In any case in which any person claiming to have a better right than the applicant to the grant of the certificate is present, the Court shall, after hearing the

tho

the application and recording the evidence produced by the applicant in support of his claim, hear such person and record the evidence produced by him in support of his claim, and shall then, after making such further enquiry (if any) as it thinks necessary, determine which of the parties (if either) has established his claim to the certificate, and shall make an order for granting the same accordingly.

In the event of neither party having, in the opinion of the Court, established his claim, the Court shall make an order dismissing both the application and the counter-claim.

6. When any order dismissing an application under section four, or any order under section five, is made, an appeal by any party to the proceedings, who deems himself aggrieved by such order, shall lie to the High Court, which may make an order dismissing such appeal or granting a certificate, or otherwise reversing or varying the order of the District Court, as it thinks fit.

Appeal to the High Court.

7. The period of limitation for an appeal under section six shall be sixty days from the date of the order appealed against.

Period of limitation for appeal.

In computing such period, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

8. A certificate granted under this Act shall specify the payments which the person to whom it is granted is entitled to receive, and shall contain such other particulars as the Governor General in Council may from time to time prescribe in this behalf.

Form of certificate.

9. Every certificate granted under section four, or section six,

Effect of certificate.

and every certificate granted under section five, when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate,

shall,

shall, while it remains in force, be conclusive evidence against the said Secretary of State in Council of the right of the person to whom it has been granted to receive the payments specified therein, and shall, unless or until it is rescinded and the authority rescinding it has given to the said Secretary of State in Council notice of such rescission, empower such person to give to the said Secretary of State in Council a full discharge for any such payment.

No obligation
to pay except
on production
of certificate.

10. The said Secretary of State in Council shall not be bound to pay the said pension or any portion thereof to any person claiming the same, except on the production by such person of a certificate, granted in the manner herein provided, authorizing him to receive the same.

Right of
third parties
against
holder of
certificate
saved.

11. Nothing herein contained shall be deemed to affect the right of any person to recover by suit from the holder of a certificate granted under this Act, the amount of any payment made to him in virtue of such certificate.

Court may
take security
from grantee
of certificate

12. The Court ordering any certificate to be granted under this Act may, if it thinks fit, direct that before such certificate is granted, such security (if any) as it thinks necessary shall be taken from the person to whom such certificate is to be granted, for his rendering an account of the payments to be received by him in virtue of such certificate to any person who may be entitled to recover from him in manner referred to in section eleven, the whole or any part of such payments.

Court may
grant fresh
certificate to
person who
has recovered
by suit
amount paid
to holder of
old
certificate.

13. The District Court may, on the application of any person who has recovered by suit from the holder of a certificate granted under this Act, the amount of any payment made to him in virtue of such certificate, grant a certificate to such person in supersession, wholly or in part, as the case may be, of the former certificate.

No appeal shall lie from any order under this section.

On

On the grant of a fresh certificate under this section the former certificate shall be deemed to be rescinded wholly or in part, as the case may be.

Effect of
fresh
certificate.

14. In all proceedings under this Act the District Court and the High Court shall, as far as may be and except as herein otherwise provided, exercise the powers and follow the procedure conferred on, and prescribed for, a Court of first instance and a Court of appeal, respectively, by the Code of Civil Procedure: Provided that nothing contained in Chapter XLV of the said Code shall apply to any order made in any such proceeding.

Proceedings
to be
regulated by
Code of Civil
Procedure.

15. The provisions of section thirteen of the said Code shall apply to all cases under section five of this Act in which the question of heirship to the said Tāj Mahal, having been directly and substantially in issue in a suit in a Court of competent jurisdiction between the claimants, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally determined by such Court.

Matters
decided in
civil suits to
be treated as
res judicata.

16. All payments heretofore made by or on behalf of the said Secretary of State in Council under the said treaty shall be deemed to have been made in accordance with law: Provided that nothing in this section shall affect the right of any person to recover by suit the amount of any such payment from the person to whom the same has been made.

Indemnity as
to payments
already made.

17. The said Secretary of State in Council may, pending the grant of a certificate as hereinbefore provided, invest in securities of the Government of India the principal sum proportionate to the pension of the said Tāj Mahal according to the rate mentioned in the said treaty, and may invest the income from time to time resulting from such securities in like securities.

Government
empowered to
capitalize
the amount
of the
pension.

And, thereupon, all further claim to such pension and income shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall be entitled,

On capital-
ization
all claim to
pension
barred.

entitled, in lieu of such pension and income, to the securities aforesaid, together with the uninvested income (if any) which from the date of making such investment has resulted from such securities.

Arrears of
pension
accruing
before
capitalization
to be
invested.

18. The said Secretary of State in Council shall, without unnecessary delay, invest, in securities of the Government of India, all arrears of such pension due at the time of the passing of this Act, and all such arrears falling due thereafter, and before the investment of the principal sum aforesaid. When any such arrears have been so invested, all further claim in respect thereof shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall, in lieu of such arrears, be entitled to the securities in which they have been invested and the income resulting therefrom.

ACT No. III OF 1881:

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 15th January, 1881.)

An Act to provide for certain matters relating to Securities of the Government of India.

WHILEAS the Governor General in Council has Preamble.
determined to issue, in respect of the four and a half per cent. loan of 1880, certificates declaring the bearers thereof entitled to the principal sums specified therein, and coupons for the interest payable on such principal sums ;

and whereas the Governor General in Council may from time to time desire to issue like certificates, with or without like coupons, in respect of other loans ;

and whereas it is expedient to declare the mode in which the title to such certificates and coupons shall be transferable ;

and whereas it is also expedient to provide for certain other matters relating to all securities of the Government of India ;

It is hereby enacted as follows :—

1. This Act may be called “ The Indian Securities Act, 1881 ” ; and shall come into force at once. Short title.
Commence-
ment.

2. In this Act, “ Government securities ” includes “ Government securities.”
promissory notes, debentures, loan-certificates, coupons and all other securities issued by the Government of India, whether before or after the passing of this Act.

3. Whenever the Governor General in Council has Certificates
and coupons
may be
transferred
and dis-
issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable

[Price one anna and three pies.]

charged like
promissory
notes payable
to bearer.

payable as interest on any portion of such loan, the title to such certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer ;

and, on payment, by or on behalf of the Government, to the bearer of such certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if such certificate or coupon were a promissory note payable to bearer.

No notice of
trust.

4. No notice of any trust in respect of any Government security shall be receivable by the Government.

Indorser of
Government
security not
liable for
amount
thereof.

5. No person shall, merely by reason of his having endorsed any Government security, be liable to pay any money due, whether on account of principal or interest, thereunder.

Signature to
Government
securities
may be
printed, &c.

6. The signature of the officer of the Government of India authorized to sign any Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on such securities.

Any such signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if the same had been subscribed in the proper handwriting of such officer.

THE PROBATE AND ADMINISTRATION ACT, 1881.

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[*Price twelve annas and six pies.*]

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CHAPTER XIII.

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1881.]

ACT No. V OF 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 21st January, 1881.)

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

Preamble

CHAPTER I.

PRELIMINARY.

1. This Act may be called “The Probate and Administration Act, 1881”;

Short title.

It applies to the whole of British India;

Local extent.

and it shall come into force on the first day of April, 1881.

Commencement.

2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindú, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April, 1881:

Personal application

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area

area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.

Interpreta-
tion-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

“Province

“Province” includes any division of British India having a Court of the last resort:

“minor:”

“minor” means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and “minority” means the status of any such person:

“will:”

“will” means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

“codicil:”

“codicil” means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will:

“specific
legacy:”

“specific legacy” means a legacy of specified property:

“demonstrative
legacy:”

“demonstrative legacy” means a legacy directed to be paid out of specified property:

“probate:”

“probate” means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

“executor:”

“executor” means a person to whom the execution of the last will of a deceased person is, by the testator’s appointment, confided:

“administrator”

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: and

"adminis-
trator:"

"District Judge" means the judge of a principal civil court of original jurisdiction.

"District
Judge."

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Character
and property
of executor
or adminis-
trator as
such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administra-
tion with
copy annexed
of authentic-
ated copy of
will proved
abroad.

6. Probate can be granted only to an executor appointed by the will.

Probate only
to appointed
executor.

7. The appointment may be express or by necessary implication.

Appointment
express or
implied.

Illustrations.

(a). A wills that C be his executor if B will not. B is appointed executor by implication.

(b). A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c). A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil

are

are these words :—" I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first, then to A.

Separate probate of codicil discovered after grant of probate.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Effect of probate.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

Effect of letters of administration.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

16. When

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

Grant of administration where executor has not renounced.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within time limited.

19. When the deceased has made a will, but has not appointed an executor, or

Grant of administration to universal or residuary legatee.

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee.

21. When

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Citation before grant of administration to legatee other than universal or residuary.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

To whom administration may be granted.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

OF LIMITED GRANTS.

(a).—Grants limited in Duration.

Probate of copy or draft of lost will.

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

25. When

• **25.** When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence. Probate of contents of lost or destroyed will.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced. Probate of copy where original exists.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced. Administration until will produced.

(b).—Grants for the Use and Benefit of Others having Right.

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself. Administration with will annexed to attorney of absent executor.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above-mentioned. Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned. Administration to attorney of absent person entitled to administer in case of intestacy.

31. When

Administra-
tion during
minority of
sole executor
or residuary
legatee.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administra-
tion during
minority of
several exe-
cutors or
residuary le-
gatees.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administra-
tion for use
and benefit of
lunatic.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

Administra-
tion *pendente*
litte.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c).—*For Special Purposes.*

Probate limit-
ed to purpose
specified in
will.

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an agent to take administration on his behalf, the letters

of

of administration with the will annexed shall accordingly be limited.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration with will annexed limited to particular purpose.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to trust-property.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to suit.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to purpose of becoming party to suit to be brought against administrator.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate

Administration limited to collection and preservation

tion of deceased's property.

situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d).—Grants with Exception.

Probate or administration with will annexed subject to exception.
Administration with exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed, shall be granted subject to such exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e).—Grants of the Rest.

Probate or administration of rest.

44. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f).—Grants of Effects unadministered.

Grant of

45. If the executor to whom probate has been granted

granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Rules as to grants of effects unadministered.

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

What errors may be rectified by Court.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

Revocation or annulment for just cause.

Explanation.—"Just cause" is—

"Just cause."

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3rd, that

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and inoperative through circumstances.

Illustrations.

(*a*). The Court by which the grant was made had no jurisdiction.

(*b*). The grant was made without citing parties who ought to have been cited.

(*c*). The will of which probate was obtained was forged or revoked.

(*d*). A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*). A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*). Since probate was granted, a later will has been discovered.

(*g*). Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(*h*). The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction
of District
Judge in
granting
and revoking
probates, &c.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Power to
appoint
Delegates
of District
Judge to deal
with non-
contentious
cases.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

Provided

• Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge's powers as to grant of probate and administration.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

District Judge may order person to produce testamentary papers.

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

Proceedings of District Judge's Court in relation to probate and administration.

When probate or administration may be granted by District Judge.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

Disposal of application made to Judge of District in which deceased had no fixed abode.

57. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted :

Effect of unlimited probates, &c., granted by certain Courts.

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Panjáb, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

60. Whenever

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants, a certificate to the following effect :—

Transmission
of certificate
by Court
granting
unlimited
probate, &c.,
to other
Courts.

“**I, A. B.,** Registrar [*or as the case may be*] of the High Court of Judicature at
[*or as the case may be*], hereby certify that on the
day of 188 the High Court
of Judicature at [*or as the case may be*] granted probate of the will [*or letters of admin-
istration of the estate*] of *C. D.*, late of
deceased, to *E. F.* of and
G. H. of , and that such probate
[*or letters*] has [*or have*] effect over all the prop-
erty of the deceased throughout the whole of British
India”;

and such certificate shall be filed by the Court receiving the same.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Conclusive-
ness of ap-
plication for
probate or
administra-
tion, if prop-
erly made
and verified.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections twenty-four, twenty-five and twenty-six, a copy, draft or statement of the contents thereof annexed, and stating

Petition for
probate.

the time of the testator's death,

that the writing annexed is his last will and testa-
ment, or as the case may be,

that

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands ;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge ; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

In what cases translation of will to be annexed to petition.

63. In cases wherein the will, copy or draft is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed ; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner :—

Verification of translation by person other than Court translator.

“ I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof.”

Petition for letters of administration.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

65. Every person applying to any of the Courts mentioned in the proviso to section fifty-nine for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

Additional statements in petition for probate, &c.

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section fifty-nine may, if it think fit, reject the same.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

Petition for probate or administration to be signed and verified.

“I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief.”

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

Verification of petition for probate by one witness to will.

“I (*C. D.*), one of the witnesses to the last will
and

and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or mark*) thereto (*as the case may be*) (*or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence*)."

Punishment
for false
averment in
petition or
declaration.

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District
Judge may
examine
petitioner in
person,

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also

require
further
evidence,

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

and issue
citations to
inspect
proceedings.

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

Publication
of citation.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Caveats
against grant
of probate
or adminis-
tration.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or

District

District Delegate to whom it may appear to the District Judge expedient to transmit the same.

71. The caveat shall be to the following effect :— Form of caveat.

“ Let nothing be done in the matter of the estate of *A. B.*, late of _____, deceased, who died on the day of _____ at _____ without notice to *C. D.* of _____

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable. After entry of caveat, no proceeding taken on petition until after notice to caveator.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court. District Delegate when not to grant probate or administration.

Explanation.—By “contention” is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or where any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge. Power to transmit statement to District Judge in doubtful cases where no contention.

75. In

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

Grant of probate to be under seal of Court.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following :—

Form of such grant.

“I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the _____ day of _____ in the year _____ the last will of _____, late of _____, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to _____, the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The _____ day of _____ 18 ____.”

Grant of letters of administration to be under seal of Court.

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following :—

Form of such grant.

“I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration

'administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

Administra-
tion-bond.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Assignment
of adminis-
tration-bond.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Time before
which pro-
bate or ad-
ministration
shall not be
granted.

81. Until

Filing of original wills of which probate or administration with will annexed granted.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him: and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, &c, until same revoked.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Payment to executor or administrator before probate or administration revoked.

84. Where any probate is, or letters of administration are, revoked, all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

Right of such executor or administrator to recoup himself.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Power to refuse letters of administration.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindú Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be

recorded

recorded by it in writing, to grant any application for letters of administration made under this Act.

Appeal from orders of District Judge.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

Concurrent jurisdiction of High Court.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

In respect of causes of action surviving deceased, and debts due at death.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to

Power of executor or administrator to dispose of property.

dispose

dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit :

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(a). The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(b). The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased with the consent of the Court. The mortgage is valid.

Purchase by executor or administrator of deceased's property.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exercisable by one.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(a). One of several executors has power to release a debt due to the deceased.

(b). One has power to surrender a lease.

(c). One has power to sell the property of the deceased, moveable or immoveable.

(d). One has power to assent to a legacy.

(e). One has power to endorse a promissory note payable to the deceased.

(f). The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary

contrary in the will or grant of letters of administration, vested in the survivors or survivor.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

95. An administrator during minority has all the powers of an ordinary administrator.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

executors or administrators.

Powers of administrator of effects unadministered.

Powers of administrator during minority.

Powers of married executrix or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral ceremonies.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

Inventory and account.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration, shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India :

Inventory to include property in any part of British India.

And

And the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

As to
property of,
and debts
owing to,
deceased.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Expenses to
be paid before
all debts.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to
be paid next
after such
expenses.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Wages for
certain
services to be
next paid,
and then
other debts.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Save as
aforesaid, all
debts to be
paid equally
and rateably.

104. Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Debts to be
paid before
legacies.

105. Debts of every description must be paid before any legacy.

Executor or
administrator
not bound to
pay legacies
without
indemnity.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

107. If

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions ;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent necessary to complete legatee's title. **112.** The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(a). A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b). A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

Effect of executor's assent to specific legacy.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(a). A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b). The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c). A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d). Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e). A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has

has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(a). A bequeaths to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b). The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person and his assent may in like manner be express or implied.

Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Implied assent.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Effect of executor's assent.

Illustrations.

(a). A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b). A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Executor when to deliver legacies.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

Commence-
ment of an-
nuity when
no time fixed
by will.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

When an-
nuity, to be
paid
quarterly or
monthly, first
falls due.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

Date of
successive
payments
when first
payment
directed to be
made within
given time,
or on day
certain.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Apportion-
ment where
annuitant
dies between
times of
payment.

and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

Investment
of sum
bequeathed
where legacy,
not specific,
given for life.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

122. Where

• **122.** Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time.

The intermediate interest shall form part of the residue of the testator's estate.

Intermediate interest.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or

Procedure when no fund charged with, or appropriated to, annuity.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee of contingent bequest.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

Time and manner of conversion and investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the

Procedure where minor entitled to

the

immediate
payment or
possession of
bequest, and
no direction
to pay to
person on his
behalf.

the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government-securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's
title to pro-
duce of
specific
legacy.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a). A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b). A bequeaths his Government-securities to B, but postpones the delivery of them till the death of C. The interest
which

*which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c). The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Residuary legatee's title to produce of residuary fund.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(a). The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b). The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Interest when no time fixed for payment of general legacy.

Exceptions.—(1). Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2). Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3). Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where

Interest
when time
fixed.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of
interest.

132. The rate of interest shall be six per cent. per annum.

No interest
on arrears of
annuity within
first year after
testator's death.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest
on sum to be
invested to
produce an-
nuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

Refund of
legacy paid
under
Judge's
orders.

135. An executor who has paid a legacy under the order of a Judge, is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if
paid volun-
tarily.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund when
legacy be-
comes due on
performance
of condition
within fur-

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the

second

second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount. ther time allowed.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion. When each legatee compellable to refund in proportion.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution; Distribution of assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively. Creditor may follow assets.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at Creditor may call upon legatee to refund.

the

the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When unsatisfied legatee must first proceed against executor, if solvent.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit to refunding of one legatee to another.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

144. The refunding shall in all cases be without interest.

Residue after usual payments to be paid to residuary legatee.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

CHAPTER XIII

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation.

Illustrations.

(a). The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b). The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c). The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

For neglect to get in any part of property.

Illustrations.

(a). The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b). The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Provisions applied to administrator with will annexed.

149. Nothing

Saving-
clause.

149. Nothing herein contained shall—

(a) validate any testamentary disposition which would otherwise have been invalid ;

(b) invalidate any such disposition which would otherwise have been valid ;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled ; or

(d) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

Repeal of portions of Act XXVII of 1860.

151. In Act No. XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*), sections 15 and 16 and the proviso to section 13 shall be repealed.

Grant of probate or administration to supersede certificate under Act XXVII of 1860, or Bombay Regulation VIII of 1827.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827 ; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding :

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. In

153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12, in the third column, after the words “amount or value,” the following shall be inserted, namely :—

Amendment
of Court-fees
Act.

“ Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant.”

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely) :—

Amendment
of Hindú
Wills Act.

(a). For the portion of section two commencing with the words “sections one hundred and seventy-nine” and ending with the words “administrator with the will annexed,” the words “and section one hundred and eighty-seven” shall be substituted.

(b). The third clause of section three and the last clause of section six shall be repealed.

(c). In section six, for the words “one hundred and three and one hundred and eighty-two” the words “and one hundred and three” shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

Validation
of grants of
probate and
administra-
tion made
in British
Burma.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures “321,” the following shall be inserted, namely—“or under the Probate and Administration Act, 1881, section 139 or 140.”

Amendment
of Act XV
of 1877.

ACT No. VI OF 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 21st
January, 1881.)*

An Act to make further provision for the grant
of Probate and Letters of Administration
in non-contentious cases.

WHEREAS it is expedient to make further provi- **Preamble.**
sion for the grant of probate and letters of
administration in non-contentious cases; It is hereby
enacted as follows :—

1. This Act may be called “The District Delegates **Short title.**
Act, 1881” :

It extends to the whole of British India ; **Extent.**

and it shall come into force on the first day of **Commence-**
April, 1881. **ment.**

2. After section 235 of the Indian Succession Act, **Addition of**
1865, the following section shall be added :— **section after**
section 235 of
Succession
Act.

“ 235 A. The High Court may, from time to time, **Power to**
appoint such judicial officers within any district as it **appoint Dole-**
thinks fit, to act for the District Judge as Delegates **gate of Dis-**
to grant probate and letters of administration in non- **trict Judge**
contentious cases, within such local limits as it may **to deal with**
from time to time prescribe : **non-conten-**
tious cases.

“ Provided that, in the case of High Courts not
established by Royal Charter, such appointment be
made with the previous sanction of the Local Govern-
ment.

“ Persons so appointed shall be called ‘ District
Delegates.’ ”

3. After

[*Price one anna and nine pies.*]

Addition of section after section 241 of same Act.

3. After section 241 of the said Act, the following section shall be added :—

Probate and letters of administration may be granted by Delegate.

“ 241 A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate.”

Addition to sections 244 and 246 of same Act.

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added :—

“ and when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate.”

Substitution of section for section 251 of same Act.

5. For section 251 of the said Act, the following section shall be substituted :—

Caveats against grant of probate or administration.

“ 251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate ; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge ; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.”

Amendment of section 253 of same Act.

6. In section 253 of the said Act, after the word “ Judge ” the words “ or officer,” and after the word “ made ” the words “ or notice has been given of its entry with some other Delegate,” shall be inserted.

Addition of sections after section 253 of same Act.

7. After section 253 of the said Act, the following sections shall be added :—

District Dele

“ 253 A. A District Delegate shall not grant probate

probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

gate when
not to grant
probate or ad-
ministration.

“*Explanation.*—By ‘contention’ is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

“253 B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Power to
transmit
statement
to District
Judge in
doubtful
cases where
no conten-
tion.

“253 C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.”

Procedure
where there
is contention,
or District
Delegate
thinks pro-
bate or letters
of adminis-
tration
should be
refused in his
Court.

8. In the said Act, sections 254 and 255, respectively, after the words “I, Judge of the District of _____,” the words “(or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate’s jurisdiction*))”; and in section 308, after the words

Amendment
of sections
254, 255 and
308 of same
Act.

“District

“ District Judge, by whom ” the words “ or by whose District Delegate ” shall be inserted.

Introduc-
tion of the
words “ or
District De-
legate ” in
certain sec-
tions of sam
Act

9. In the said Act, sections 246, 250, 255 and 259, after the words “ District Judge,” and in section 250 and section 254 (when it first occurs) after the word “ Judge,” the words “ or District Delegate ” shall be inserted respectively.

ACT No. VII OF 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 21st January, 1881.)

An Act to amend Bengal Act No. IX of 1880
(the Cess Act, 1880).

WHEREAS it is expedient to amend Bengal Act No. IX of 1880 (the Cess Act, 1880); It is hereby enacted as follows :—

Preamble.

1. In the said Act, after section sixty-four, the following sections shall be inserted, and shall be deemed to have been so inserted on and from the date on which such Act came into force.

Amendment of Bengal Act No. IX of 1880.

“61A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation :

Holders of estates, &c., how to recover from holders of rent-free lands.

“Provided that, if any such objection as is mentioned in section 53 has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

“61B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the

Owner, holder or occupier of rent-free lands may be sued.

rent

[Price one anna and three pies.]

Decree
against oc-
cupier tanta-
mount to
decree
against

rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer."

THE PETROLEUM ACT, 1881.

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THE SCHEDULE.

[*Price four annas.*]

ACT No. VIII OF 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 5th February, 1881.)

An Act to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows :— Preamble.

Preliminary.

1. This Act may be called “The Petroleum Act, 1881”; Short title.

and it shall come into force on the first day of July, 1881. Commencement.

The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct. Local extent.

2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III of 1865 (*to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places, within the Provinces under the control of the Lieutenant-Governor of Bengal*) are hereby repealed. Repeal of enactments.

3. In this Act, unless there is something repugnant in the subject or context,— Interpretation-clause.

“petroleum” includes also the liquids commonly known

known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule hereto annexed :

"dangerous petroleum."

"dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer :

"import."

"import" means to bring into British India by sea or land :

"importation."

and "importation" means the bringing into British India as aforesaid :

"transport."

"transport" means to remove from one place to another within British India.

Dangerous Petroleum.

Dangerous petroleum in quantities exceeding 40 gallons.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Application for license to import, transport or possess such petroleum.

Every application for such a license shall be in writing, and shall declare—

(a) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(b) the purpose for which the applicant believes that such petroleum will be used ; and

(c) that

(c) that petroleum other than dangerous petroleum cannot be used for such purpose.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

Power to grant license.

5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license :

Dangerous petroleum in quantities not exceeding 40 gallons.

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped.

6. All dangerous petroleum—

(a) which is kept at any place after seven days from the date on which it is imported, or

(b) which is transported, or

(c) which is sold or exposed for sale,

shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

Vessels containing dangerous petroleum to be marked.

Petroleum generally.

7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

Power to make rules as to the importation of petroleum.

(a) for ascertaining the quantity and description of any petroleum on board a ship ;

(b) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof ;

(c) to

(c) to determine the ports at which only petroleum may be imported; and

(d) to regulate the time and mode of, and the precautions to be taken on, landing or transshipping any petroleum.

In this section—

ship

“ship” includes anything made for the conveyance by water of human beings or property;

“master.”

“master” includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

1 ion
and transport
of petroleum.

8. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises or shall be transported except under, and in accordance with the conditions of, a license granted under this Act.

Power to
make rules as
to such pos-
session and
transport.

9. The Local Government may, from time to time, make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(a) the nature and situation of the premises for which they may be granted, and

(b) the inspection of such premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(c) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(d) the stoppage and inspection of it during transit;

in the case of both such licenses—

(e) the authority by which the license may be granted;

(f) the fee to be charged for it;

(g) the

- (g) the quantity of petroleum it is to cover ;
- (h) the conditions which may be inserted in it ;
- (i) the time during which it is to continue in force ; and
- (j) the renewal of the license.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

Power to inspect and require dealer to sell samples.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his agent may be present at such testing.

Notice to be given when officer proposes to test samples.

12. On any such testing, if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein ; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Certificate as to result of such testing.

Penalties.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum, and any person who otherwise

Penalty for illegal importation, &c., of petroleum.

wise

wise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Penalty for keeping, transporting, selling or exposing for sale petroleum in contravention of section 6.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six shall be punished with fine which may extend to fifty rupees.

Penalty for refusing to comply with section 10.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

Confiscation of petroleum.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that—

(a) the petroleum in respect of which the offence has been committed, or,

(b) where the offender is importing or transporting, or is in possession of, any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing or transporting, or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

Jurisdiction.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Miscellaneous.

Miscellaneous.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law :

Rules when
to have force
of law.

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply .

Power to
apply this
Act to other
fluids.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

The following is a description of the details of the apparatus :—

The oil-cup consists of a cylindrical vessel 2" diameter, $2\frac{2}{10}$ " height (internal), with outward projecting rim $\frac{5}{10}$ " wide, $\frac{3}{8}$ " from the top and $1\frac{7}{8}$ " from the bottom of the cup. It is made of gun-metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as gauge. The distance of the point from the bottom of the cup is $1\frac{1}{8}$ ". The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test-lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate : it is provided with a spout

the

the mouth of which is $\frac{1}{16}$ " in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted, that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$ " below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{5}{16}$ " by $\frac{1}{16}$ ", and two smaller ones, $\frac{3}{16}$ " by $\frac{2}{16}$ ", close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3" diameter and $2\frac{1}{2}$ " height, and an outer one of $5\frac{1}{2}$ " diameter and $5\frac{1}{4}$ " height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}$ ", that is, its diameter is about $\frac{9}{8}$ " greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil-cup. The exact distance between the sides and bottom of the bath of the oil-lamp is $1\frac{1}{2}$ ". A split socket similar to that on the cover of the oil-cup, but set at a right angle, allows

allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}$ ". One of the three legs of the stand serves as support for the spirit-lamp, attached to it by means of a small swing bracket. The distance of the wick-holder from the bottom of the bath is 1".

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing-point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}$ " measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{4}$ ".

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test-apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow

out

out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test-lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape-oil up to the lower edge of the opening of the spout or wick-tube. The lamp is trimmed so that when lighted it gives a flame of about 0.15 of an inch diameter, and this size of flame, which is represented by the projecting white bead on the cover of the oil-cup, is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil-lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the
temperature

temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and, if it exceeds 65° , the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test-lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66° , the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test-apparatus to determine the flashing-points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air-chamber which surrounds the cup is filled with cold water to a depth of $1\frac{1}{2}$ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120° , instead of with cold water.

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

ACT No. IX OF 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 25th February, 1881.)

An Act to amend the Administrator General's Act, 1874.

WHEREAS Hindús, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act, 1874, but are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans and Buddhists; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called “The Administrator General's Act, 1881”:

and shall come into force at once.

2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the word “Muhammadan” and the words “or Buddhist,” wherever they occur, the word “Pársí” shall be inserted.

3. After section twenty-three of the same Act, the following section shall be inserted:—

“23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency

Preamble

Commencement.

Amendment of sections 16, 17, 18 and 64 of Act No. 11 of 1874.

New section inserted after section 23 of Act No. 11 of 1874.

Effect of probate or letters granted to Administrator General.

Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property, to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

“Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same.”

4. For section twenty-eight of the same Act, the following section shall be substituted:—

“28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

“Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.”

5. In section thirty-six of the same Act, the words “not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation

of

New section substituted for section 28 of same.

Distribution of assets.

Amendment of sections 36 and 37 of same.

of that Act" shall be repealed; and in section thirty-seven of the same Act, after the words "effects of the deceased," the following shall be inserted, namely:—"and such deceased was not a Hindú, Muhammadan, Pársi or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act."

6. In section thirty-eight of the same Act, for the words "such certificate" the words "certificate under section thirty-six or thirty-seven" shall be substituted; and the words "which oath or affirmation the Administrator General is hereby authorized to administer or take" shall be repealed.

Amendment of section 38 of same.

7. After section fifty-five of the same Act, the following section shall be inserted:—

New section inserted after section 55 of same.
Commission on assets collected beyond Presidency.

"55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

8. Before section sixty-one of the same Act, the following section shall be inserted:—

New section inserted before section 61 of same.
Power to examine on oath.

"60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

Saving of letters and certificates already granted.

ACT No. X OF 1831.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 25th February, 1831.)

An Act to amend the Coroners' Act, 1871, and for other purposes.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court; and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to amend the said Act in other particulars hereinafter appearing;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII of 1867 (*an Act to incorporate the Police of the Town of Madras with the General Police of the Madras Presidency, and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows:—

1. This Act may be called "The Coroners' Act, 1831," and shall come into force on the passing thereof.

Short title.
Commence-
ment.

2. The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.

Partial repeal
of Act IV of
1871, section
1.

3. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras:

Power to
alter local
limits of
jurisdiction
of Coroner of
Madras.

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

4. When

[Price one anna and six pies.]

Sections 133 to 135 of Act X of 1872 to extend to area excluded from Coroner's jurisdiction.

4. When, in exercise of the power conferred by section three, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections one hundred and thirty-three to one hundred and thirty-five (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.

Act IV of 1871, section 8, amended.

5. In section eight of the Coroners' Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.

Section 17 of same Act amended.

6. For the first two clauses of section seventeen of the Coroners' Act, 1871, the following shall be substituted, that is to say:—

"It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses: the Coroner shall enquire of such circumstances and the cause of death, and, if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

"Any person disobeying such summons shall be deemed to have committed an offence under section one hundred and seventy-four, section one hundred and seventy-five or section one hundred and seventy-six of the Indian Penal Code, as the case may be."

Addition to section 20 of same Act.

7. To section twenty of the Coroners' Act, 1871, the following clause shall be added, that is to say:—
"For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."

New section substituted for section 9 of Madras Act VIII of 1867.

8. For section nine of the said Madras Act No. VIII of 1867, the following section shall be substituted:—

Law to govern Town Police.

"9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code contained

in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117 (first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII, sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII (except section 385), sections 415 to 420 (both inclusive) and 480, so far as they are applicable :

“ Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances.”

9. The portion of Schedule V of the Code of Criminal Procedure, under the heading “ Acts of the Governor of Madras in Council,” shall be read as if the letter and figure “ s. 9” in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.

Act X of
1872,
Schedule V,
in part
repealed.

ACT No. XI of 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 25th
February, 1881.)*

An Act to give power to prohibit the levy of
municipal taxes in certain cases.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows:—

1. This Act may be called “The Municipal Tax-
ation Act, 1881.”

It extends to the whole of British India :
and shall come into force at once.

2. In this Act “Municipal Committee” includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—

(a) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or

(b) payable by the Secretary of State for India in Council.

Preamble.

Short title.

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State in
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pay taxes
referred to in
section 3,
clause (a).

4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (a) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person :

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

Payments to
be made in
lieu of taxes
referred to in
section 3,
clause (b).

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

Decision of
questions
arising under
this Act.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

THE NORTH-WESTERN PROVINCES RENT ACT, 1881.

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List of property to be prepared and copy served on
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64. Standing crops, &c., when distrained, may be reaped and
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65. Assistance to distrainer opposed or apprehending resist-
ance.
66. Distress to be withdrawn on tender of arrear and ex-
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69. Procedure on receipt of application.
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71. Suit to contest distrainer's demand before issue of notice
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72. Distress when to be withdrawn.
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74. Place of sale.
Manner of sale.
Withdrawal of distress when demand and costs satisfied.
75. If fair price be not offered, sale may be postponed and
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76. Payment of purchase-money.
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Certificate to purchaser.
77. Deduction, from proceeds, of costs of sale.
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Surplus.
78. Sale-officers and employés prohibited from purchas-
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cause.
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- 125. Judgment by default.
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allow him to be heard in answer.
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ment.
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- 129. Examination.
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hearing.
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quired.

SECTIONS.

136. Party to attend in person when his agent is unable to answer.
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137. Procedure when parties at issue on question requiring evidence.
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Trial of issue *ex parte*.
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142. Personal attendance of female plaintiff or defendant when not required.
143. Parties may employ agents.
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Fee for agents not chargeable as costs.
144. Court may grant time or adjourn hearing.
145. Court may cause local enquiry and report, or may itself enquire.
Provisions applied to such inquiry.
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146. Defendant may pay admitted debt and costs into court.
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150. Delivery of judgment.
151. Its language and contents.
When it may be in English.
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Magistrate to give it effect in case of opposition.

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SECTIONS.

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155. Process against surety on failure to deliver judgment-debtor into custody.
156. Process of execution against person or property, but not both.
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157. Execution against moveable property.
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158. Date and duration of writs.
159. Second and successive writs.
160. After one year execution not to issue without notice to party concerned.
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163. Procedure in execution of writ against person.
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164. No person to be imprisoned a second time under same judgment.
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When not extinguished.
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167. Diet-money spent to be costs in suit.
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172. Process when the immoveable property is not a mahál.
Possession to be given to auction-purchaser.
173. Procedure when it is a mahál.
174. Procedure where judgment-debtor fails to satisfy creditor within further time, or Collector thinks sale inexpedient.
Power to transfer property to judgment-creditor.
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SECTIONS.

- 174A. Proprietor to be treated as ex-proprietary tenant of
sir-land.
 - 175. Report of case to Board.
 - 176. Procedure on receipt of report.
 - 177. Power to order sale of property.
 - 178. Examination of third party claiming interest in property.
Stay of sale.
 - 179. Adjudication of such claims.
Rules applied.
 - 180. Compensation awardable against claimant failing to
establish right.
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Right to sue in Civil Court.
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(A.)—From Decrees in Suits.

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of first class when final.
- 183. Appeal from decision of Assistant Collector of second
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- 184. Time for presentation.
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- 189. Appeal to District Judge.
Appeal to High Court.
- 190. Rules as to time of presentation, &c., to apply.
- 191. Special appeal to High Court from District Judge.

*(B.)—From Orders on Applications or relating to the Execution of
Decrees.*

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on certain applications.
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class.
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196. Appeal

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(3) *Collector of the District.*

196. Appeal from certain orders of Collector of District.

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197. Finality of orders of Commissioner of Division.

198. Appeal to Board from his decisions on appeals against orders on applications mentioned in section 100.

199. Power of Board to call for cases and pass orders thereon.

200. Time for appealing.

201. Admission of appeals after prescribed period.

(5) *Review.*

201A. Power of Board to review its orders.

201B. Reviewing of applications not open to appeal.

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202. Time to be excluded in computing limitation-period.

203. Rule as to last day for presentation or deposit, when Court is closed on such day.

204. Power to state case involving point of law for opinion of District Judge.

205. Power to refer to High Court questions as to jurisdiction.

206. Procedure where objection that suit was instituted in wrong Court was not taken in Court of first instance.

207. Procedure where such objection was taken in Court of first instance.

208. Procedure where, in such cases, the appellate Court has not materials for determining the suit.

208A. Power to refer party to civil Court.

209. Suits by co-sharer against lambardâr for share of profits.

210. Tenant's power to implead persons claiming through landholder.

Landholder's power to implead persons claiming through tenant.

211. Power of Local Government to make rules.

Power of Board to make rules.

212. Instalments when to be deemed in arrear.

FIRST SCHEDULE.—FORMS.

SECOND SCHEDULE.—TERRITORIES EXEMPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

ACT No. XII OF 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 11th March, 1881.)

An Act to amend the Law relating to the recovery of Rent in the North-Western Provinces.

WHEREAS it is expedient to amend the law relating to the recovery of Rent in the North-Western Provinces of the Presidency of Fort William in Bengal It is hereby enacted as follows :— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called “The North-Western Provinces Rent Act, 1881” : Short title.

It extends in the first instance to the territories for the time being under the government of the Lieutenant-Governor of the North-Western Provinces, except those specified in the second schedule hereto annexed. But the Local Government may, by notification in the official Gazette, extend the whole or any part of this Act to all or any of the territories so excepted, and when any part of the North-Western Provinces Rent Act, 1873, has been extended to any such territory, such part shall be repealed therein and the corresponding part of this Act shall extend thereto. Local extent.

Save as provided by sections 171 and 172, nothing herein contained applies to land for the time being occupied by dwelling-houses or manufactories, or appurtenant

appurtenant thereto, so long as such land is not let to agricultural tenants.

Commence-
ment.

This Act shall come into force on the first day of April, 1881.

Act No.
XVIII of
1873 re-
pealed.

2. The North-Western Provinces Rent Act, 1873, is hereby repealed. But such repeal shall not legalize any practice which, immediately before the passing of that Act, was unlawful.

Rules, &c.,
under re-
pealed Act.

All rules and appointments made, notifications and proclamations issued, authorities and powers conferred, leases granted, rents fixed, rights acquired, liabilities incurred and places appointed, under that Act shall, so far as may be, be deemed to have been made, issued, conferred, granted, fixed, acquired, incurred and appointed hereunder.

Acts amend-
ed.

Illustration (a) to the Indian Penal Code, section 19, and Act No. XI of 1865, section 52, shall be read as if, for "Act X of 1859," the words and figures, "the North-Western Provinces Rent Act, 1881," were substituted. And in all Acts passed after the said North-Western Provinces Rent Act, 1873, all references to that Act shall be read as if made to this Act.

Interpreta-
tion-clause.

3. In this Act, unless there be something repugnant in the subject or context—

'Mahál :'

(1) 'Mahál' means—

(a) any local area held under a separate engagement for the payment of land-revenue, and for which a separate record-of-rights has been framed ;

(b) any local area of which the revenue has been assigned or redeemed, and for which a separate record-of-rights has been framed :

'Tenant :'

(1A) 'Tenant' includes a thékadár and a katkanadár :

Rent :'

(2) 'Rent' means whatever is to be paid, delivered or rendered by a tenant on account of his holding, use or occupation of land :

'Landhold-
er :'

(3) 'Landholder' means the person to whom a tenant is liable to pay rent :

(4) 'Sír-land'

(4) 'Sir-land' means—

'Sir-land :'

(a) land recorded as sir at the last settlement or revision of settlement of the district in which it is situate, and continuously so recorded since ;

(b) land continuously cultivated for twelve years by the proprietor himself with his own stock or by his servants, or by hired labour ;

(c) land recognized by village-custom as the special holding of a co-sharer, or treated as such in the distribution of profits or charges among the co-sharers :

(5) 'Collector of a District' means the chief officer in charge of the Revenue Administration of a District : 'Collector of a District :'

(6) 'Commisisoner of a Division' means the chief officer in charge of the Revenue Administration of a Division : 'Commisisoner of a Division :'

(7) 'Board' means the Board of Revenue for the North-Western Provinces : 'Board :'

(8) 'Civil Jail' means the civil jail of the District, and includes any place appointed by the Local Government for the confinement of prisoners under sentence of any Court constituted under this Act. 'Civil Jail :'

CHAPTER II.

RIGHTS AND LIABILITIES OF LANDHOLDERS AND TENANTS.

4. When any permanent and transferable interest in land in a district or a portion of a district which has been permanently settled has been held otherwise than under a terminable lease by any person intermediate between the proprietor of the mahál and the occupants, and by the predecessors in interest of such person, from the time of the permanent settlement, at the same rate of rent, such person shall have a right to hold such interest at that rate.

Intermediate holders of land at rates unchanged since permanent settlement.

5. When

Tenants at
fixed rates.

5. When any land in a district or portion of a district which is permanently settled has been held by a tenant and his predecessors in interest, from the time of the permanent settlement, at the same rate of rent, such tenant shall have a right of occupancy at that rate.

A tenant having such right is hereinafter called a "tenant at a fixed rate."

Presumption
when 20
years' hold-
ing at fixed
rate is
proved.

6. When, in any suit to which the provisions of section 4 or section 5 apply, it is proved that the land has for a period of twenty years next before the institution of the suit been held by the present holder and his predecessors in interest at the same rate of rent, it shall be presumed, until the contrary is proved, that it has been held at such rate from the time of the permanent settlement.

Ex-proprie-
tary tenants.

7. Every person who may hereafter lose or part with his proprietary rights in any mahál shall have a right of occupancy in the land held by him as sír in such mahál at the date of such loss or parting, at a rent which shall be four annas in the rupee less than the prevailing rate payable by tenants-at-will for land of similar quality and with similar advantages.

Persons having such rights of occupancy shall be called "ex-proprietary tenants," and shall have all the rights of occupancy-tenants.

If there are two or more sharers in any sír-land and one of them becomes an ex-proprietary tenant, the share which previously belonged to such ex-proprietary tenant shall, on his application or on the application of the person entitled to receive the rent, be divided off by the Collector, and the rights of the ex-proprietary tenant shall be limited to the land comprised in such share.

Occupancy-
tenants.

8. Every tenant who has actually occupied or cultivated land continuously for twelve years has a right of occupancy in the land so occupied or cultivated by him.

Such tenants shall be called "occupancy-tenants."

The occupation or cultivating of the father or
other

other person from whom the tenant inherits, shall be deemed to be the occupation or cultivating of the tenant within the meaning of this section :

Provided that no tenant shall acquire, under this section, a right of occupancy—

Tenants barred from right of occupancy.

(a) in land which he holds from an occupancy-tenant, or from an ex-proprietary tenant, or from a tenant at fixed rates ;

(b) in sir-land ;

(c) in land held by him in lieu of wages :

Provided also that, when a tenant actually occupies or cultivates land under a written lease, without having a right of occupancy in such land, the period of twelve years necessary for acquiring a right of occupancy therein by him or any one claiming under him shall begin on the expiration of the term of such lease. If during the currency of such lease he ceases to occupy the land comprised therein, and sub-lets it to another, no right of occupancy in such land shall be acquired by the sub-lessee during the currency of the lease.

Time excluded from reckoning period necessary for acquiring right of occupancy.

9. The right of tenants at fixed rates may devolve by succession or be transferred.

Rights under sections 7 and 8 when transferable.

No other right of occupancy shall be transferable in execution of a decree or otherwise than by voluntary transfer between persons in favour of whom as co-sharers such right originally arose, or who have become by succession co-sharers therein.

When any person entitled to such last-mentioned right dies, the right shall devolve as if it were land : Provided that no collateral relative of the deceased who did not then share in the cultivation of his holding shall be entitled to inherit under this clause.

10. On the application of any tenant to have his class of tenure determined, the Collector of the District or Assistant Collector shall determine the class to which he belongs, namely—

Determination of class of tenure of tenant.

whether he is a tenant at fixed rates,
or an ex-proprietary tenant,

or

or an occupancy-tenant,

or whether he is a tenant without a right of occupancy.

Bar to enhancement of rent of tenants at fixed rates. Enhancement in case of ex-proprietary and occupancy-tenants.

11. The rent paid by tenants at fixed rates shall not be liable to enhancement, except as provided by section 18.

12. The rent paid by ex-proprietary or occupancy-tenants shall not be liable to enhancement except—

(a) by a written agreement registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or recorded before the kánúngo : or

(b) by order of a Settlement-officer passed under the law for the time being in force : or

(c) by order under this Act.

Grounds of enhancing rent of occupancy-tenants which has not been fixed by order.

13. (a) Where the rent of any occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

(b) or where the rent has been fixed by any such order, but the term for which it has been fixed has expired,

(c) or where ten years from the date on which an order fixing the rent has taken effect have expired,

(d) or where by order of the Local Government the assessment of the district has been revised before confirmation,

(e) or where the period of settlement of the district has come to an end,

the landholder may apply to enhance the rent of such tenant on one of the following grounds and on no others :—

(f) that the rate of the rent paid by such tenant is below the prevailing rate payable by the same class of tenants for land of similar quality with similar advantages ;

(g) that the value of the produce has, or the productive powers of the land have, been increased otherwise

wise

wise than by the agency or at the expense of the tenant ;

(*h*) that the quantity of land held by the tenant has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

14. (*a*) Where the rent of any ex-proprietary tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

Enhancement of rent of ex-proprietary tenants which has not been fixed by order.

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (*c*), (*d*) and (*e*) has occurred,

the landholder may apply to enhance or determine the rent of such tenant as if he were an occupancy-tenant : Provided that his rent shall be four annas in the rupee below the prevailing rate for land of a similar quality with similar advantages held by tenants-at-will.

(*b*) Whenever the district or tahsíl, or other local area in which such land is situated, has been divided by the Settlement-officer into circles of like capacity and soil, the land of similar quality, with similar advantages, shall, for the purposes of this section and section 13, be selected from the same circle.

Selection of land for comparison.

(*c*) When the Settlement-officer has not so divided the district or other local area as aforesaid, the land regarding which the application has been made shall be compared with land of similar quality and with similar advantages, in the same tahsíl or in a tahsíl immediately adjacent.

15. Where the rent of any ex-proprietary tenant or occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

Abatement in like cases.

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or

or where any of the events mentioned in section 13, clauses (c), (d) and (e) has occurred,

the tenant may apply for an abatement of his rent on one of the following grounds, and on no others:—

(a) that the area of the land held by him has been diminished by diluvion or otherwise :

(b) that the value of the produce has, or the productive powers of such land have, been decreased by any cause beyond his power.

Time of enhancement or abatement where rent of ex-proprietary or occupancy-tenant has been fixed by order under this Act. Grounds of enhancement and abatement where his rent has been fixed by order of a Settlement-officer or under this Act.

16. Where the rent of any ex-proprietary or occupancy-tenant has been fixed by an order under this Act, such rent shall not be liable to be enhanced or abated until the occurrence of any of the events mentioned in section 13, clauses (c), (d) and (e), whichever first occurs.

17. Notwithstanding anything contained in section 16, where the rent of any ex-proprietary or occupancy-tenant has been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act, the landholder may apply to enhance the rent of such tenant during the currency of the term for which the rent has been so fixed, on one of the following grounds, and on no others:—

(a) that the area of the tenant's holding has been increased by alluvion or otherwise :

(b) that the productive powers of the land held by the tenant have, since the date of the order, been increased otherwise than by the agency or at the expense of the tenant :

And the tenant may apply for abatement of his rent on one of the following grounds, and on no others:—

(c) that the area of the land held by him has been diminished by diluvion or otherwise ;

(d) that the productive powers of such land have been decreased by any cause beyond his control.

Grounds of enhancement or

18. In the case of a tenant at fixed rates, the landholder

landholder may apply to enhance his rent on the ground that the area of the land in his holding has been increased by alluvion or otherwise,

abatement of rent of tenant at fixed rates.

and the tenant may apply for abatement of his rent on the ground that the area of the land in his holding has been diminished by diluvion or otherwise.

19. Applications for enhancement or abatement of rent must be made on or before the thirty-first day of August next before the year commencing on the first day of July from which the rent is to be enhanced or abated,

Day before which applications for enhancement or abatement must be made.

and every order for enhancement or abatement shall take effect from the first day of July next following the date of such order, unless for some reason, to be stated in writing, the Court thinks fit to order otherwise.

Orders when to take effect.

20. In determining, under this chapter, the rate of rent payable by any tenant, his caste shall not be taken into consideration, unless it is proved that, by local custom, caste is taken into account in determining such rate ;

Consideration of caste and class of tenant in determining rate of his rent.

and whenever it is found that, by local custom or practice, any class of persons, by reason of their having formerly been proprietors of the soil or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice.

21. No tenant-at-will of land shall be liable to pay rent in excess of the rent (if any) payable by him in the previous year ending on the thirtieth day of June, unless the landholder and tenant have agreed as to the rent to be paid to the former by the latter, and such agreement has been recorded by the kánúngo of the pargana in which such land is situate.

Tenants-at-will.

22. Notwithstanding anything hereinbefore contained, when the rent of any ex-proprietary or occupancy-tenant has been fixed by agreement between the parties, such rent shall not be liable to enhancement or abatement for such term as may be agreed on.

Rent of ex-proprietary or occupancy-tenant fixed by agreement.

Applications
to survey
land.

22A. When any land is held of a landholder by a tenant, such landholder or tenant may, in the absence of a written contract to the contrary, apply to the Collector of the District to have such land surveyed. The Collector, on receiving such application, may estimate the cost of such survey, and, by order in writing, require the applicant to deposit the amount of such estimate.

If the applicant deposits such amount within fifteen days from the date of the order, the Collector of the District shall issue a notice to the other party or parties to the tenancy to show cause, at a time and place specified in such notice, why the survey should not be made; and, if no such cause is so shewn, may, by an order in writing, direct the survey to be made by such person and at such time as he thinks fit.

A copy of such order shall be served on all the parties to the tenancy; and, if any party fails to attend at the appointed time, it shall not thereafter be open to him to question the correctness of the survey made in his absence.

If any party, on being called upon to show cause as aforesaid, makes any objection to the survey and such objection is overruled, he shall be liable to pay the costs (if any) occasioned by such objection.

Nothing in this section shall affect any power conferred by law to compel the attendance of any person at a survey.

Power to re-
mit or sus-
pend pay-
ment of rent
when pay-
ment of
revenue re-
mitted or
suspended.

23. Whenever for any cause the Local Government remits or suspends for any period the payment of the whole or any part of the revenue payable in respect of any land, any officer empowered by the Local Government in this behalf may, subject to such rules as to appeal, confirmation or otherwise, as may, from time to time, be prescribed by the Board, order that the rent of such land shall be remitted or suspended for the period of such suspension of payment of revenue, as the case may be, to an amount which shall be equal to double the amount of the revenue of which the payment has been so remitted or suspended, or shall bear the same proportion to the whole of the

rent

rent payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land;

and, subject to the same rules, the landholder shall be bound by such order.

(A.)—*Leases.*

24. Every tenant is entitled to receive from the landholder, and may at any time during the continuance of his holding apply for, a lease containing the following particulars:—

Contents of lease to which every tenant is entitled.

- (a) the quantity of land held by him, and, where the fields have been numbered in a Government survey, the number of each field;
- (b) the amount of annual rent payable for such land;
- (c) the instalments in which, and the dates on which, such rent is to be paid;
- (d) any special conditions of the lease;
- (e) if the rent is payable in kind, or is calculated on a valuation of the produce, the proportion of produce to be delivered, the mode of valuation, and the time, manner and place of delivery.

25. Tenants at fixed rates are entitled to receive leases at such rates.

Leases to which tenants at fixed rates are entitled.

26. Ex-proprietary and occupancy-tenants are entitled to receive leases at the rates determined in accordance with the law for the time being in force, or, where no rates have been so determined, at the rates actually paid by them when they demand such leases.

Leases to which ex-proprietary and occupancy-tenants are entitled.

27. All other tenants are entitled to leases only on such terms as may be agreed upon between them and the landholders.

Leases to which other tenants are entitled.

28. Every landholder who grants a lease is entitled to receive a reciprocal engagement from the tenant,

Landholder granting lease entitled to reciprocal engagement.

executed

executed by the tenant, and conformable with the terms of the lease.

The tender to any tenant of a lease, such as he is entitled to receive, shall entitle the landholder to receive a reciprocal engagement from such tenant.

Lease for
period ex-
ceeding ter-
of land-
holder's
engagement.

29. Notwithstanding anything contained in section 22, when any lease is granted, or any agreement is entered into, by any landholder under engagement with Government for his land, fixing the rent of land for any period exceeding the term of such engagement, and such term expires, such lease or agreement shall,

(a) when, on the expiration of such term, the revenue payable in respect of such land is enhanced—be voidable at the option of the landlord, unless the tenant agrees to pay such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the landlord, determine to be fair and reasonable; and

(b) when such land-revenue is on the expiration of such term reduced—be voidable at the option of the tenant, unless the landlord agrees to accept such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the tenant, determine to be fair and reasonable.

Resumption
of rent-free
grants.

30. (a) And whereas all grants (whether in writing or otherwise) for holding land exempt from the payment of rent which have been made since the first day of December, 1790, by any authority other than that of the Governor General in Council, were declared by Bengal Regulation XIX of 1793, section 10, to be null and void, and like provisions have been by divers Regulations applied to the several parts of the territories to which this Act extends, and the said Regulation XIX of 1793 also provided that no length of possession should be considered to give validity to any such grant, either with regard to the property in the soil or the rents of it, it is hereby further enacted as follows :—

Applications
to resume.

(b) Applications by the proprietor to resume such grants or to assess rent on the land, shall be made to the

the Collector of the District or Assistant Collector, and, subject to rules to be made by the Local Government, shall be dealt with as other applications under this Act.

(c) Grants of land held under a written instrument, by which the grantor expressly agrees that the grant shall not be resumed, shall be held valid as against him (but not as against his representatives after his death) during the continuance of the settlement of the district in which the land is situate, which is current at the date of the grant.

Validity of grants which grantor has expressly agreed not to resume.

(d) Where any land, having been for the fifty years next before the twenty-second day of December, 1873, held rent-free and by at least two successors to the original grantee, was so held on that day, such holding shall be deemed to have conferred on the holder a proprietary right.

When rent-free tenure confers proprietary right.

(e) Nothing in the Indian Limitation Act, 1877, shall bar the right to make an application under this Act to assess to rent land held rent-free.

(f) Nothing in this section shall apply to either of the following cases:—

(1) Where land was, previously to the passing of the North-Western Provinces Rent Act, 1873, held rent-free under a judicial decision:

(2) Where, previously to the passing of that Act, land held rent-free had been purchased for a valuable consideration and resumption thereof had been barred under Act No. X of 1859, section 28, or under the Indian Limitation Act, 1871, Schedule II, No. 130.

(B.)—Relinquishment and Ejectment.

31. Every tenant not holding under a lease shall continue liable for the rent of the land in his holding for the ensuing year, unless on or before the first day of May in any year he gives notice in writing to the landholder, or his recognized agent, of his desire to
relinquish

Relinquishment of land by tenant not holding under a lease.

relinquish such land on the thirtieth day of June next ensuing, and relinquishes it accordingly; or unless it is let to any other person by such landholder or agent:

Proviso.

Provided that, whenever an order for the enhancement of the rent of any land held by any such tenant is passed and the tenant within fifteen days of the date of such order gives to the landholder or his recognized agent notice in writing of his desire to relinquish such land at the commencement of the period in respect of which such enhancement takes effect, and relinquishes such land accordingly, he shall not be liable for the rent payable for such land in respect of any period subsequent to such relinquishment.

Explanation.—No notice can be given under this section in respect of a portion only of any land held under the same lease or engagement.

Service through tahsildár or notice of relinquishment.

32. If the landholder or his agent refuses to receive any notice under section 31, or if he receives it, but refuses to sign and deliver a receipt for the same, the tenant may, before the expiration of the period limited for giving such notice, make an application to the tahsildár, who shall thereupon cause the notice to be served on such landholder or agent, the tenant paying the costs of service.

Mode of serving notice.

33. The notice shall, if practicable, be served personally on the landholder or his agent; but if the landholder or his agent cannot be found, or if he evades service of the notice, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the land is situate, at the *chaupál*, or other conspicuous place in the village where the land is situate.

Where the delay in serving the notice is owing to the fault of the landholder or his agent, the notice shall be deemed to have been served at the first attempt to serve it.

Application by landholder to set aside notice.

33A. When any such notice has been received by or served on a landholder or his agent, he may, within fifteen days from such receipt or service, apply to

to the Collector or Assistant Collector to have such notice declared invalid, and the Collector shall thereupon determine the question between the parties.

If the landholder or his agent does not so apply within such period of fifteen days, he shall be deemed to have accepted the notice.

34. (a) When an arrear of rent remains due from any tenant, he shall be liable to pay interest on such arrear at one per cent. per mensem; and if the arrear remains due on the thirtieth day of June, to be ejected from the land in respect of which the arrear is due.

Liability of tenant to pay interest on arrear and to be ejected.

(b) No tenant shall be ejected otherwise than in execution of a decree or order under the provisions of this Act.

Bar to ejectment without decree.

(c) No ejectment of a tenant or forfeiture of a lease shall be decreed on account of any act or omission of the tenant—

Ejectment not to be decreed for certain acts or omissions.

(1) which is not detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let, or

(2) which by law, custom, or special agreement does not involve the forfeiture of the lease.

Explanation.—In clauses (a) and (b) the word ‘tenant’ does not include a thékadār and a katkana-dār.

35. If the landholder desires to eject a tenant at fixed rates, an ex-proprietary tenant, an occupancy-tenant or a tenant holding under an unexpired lease, against whom a decree for arrears has been passed and remains unsatisfied, he may, after the expiration of the year, ending on the thirtieth day of June, in which such arrears accrued, apply to the Collector of the District or Assistant Collector to eject the tenant.

Ejectment of tenant at fixed rates, ex-proprietary, with right of occupancy, or holding under unexpired lease.

Such officer shall, on receiving such application, cause a notice to be served on the tenant, stating the amount due under the decree, and informing him that if he does not pay such amount into court within fifteen days from receipt of the notice, he will be ejected from his land.

If

If such amount be not so paid, the Collector of the District or Assistant Collector may eject the tenant.

Service of notice on tenant for limited period.

36. If the landholder desires to eject a tenant not having a right of occupancy, or any other tenant holding only for a limited period, after the determination of his tenancy, he shall cause a written notice of ejectment to be served on such tenant under the provisions of this Act.

Language and contents of notice.

37. The notice of ejectment shall be written in the vernacular language and character of the district :
it shall specify the land from which the tenant is to be ejected ;

and it shall inform him that he must vacate such land ; or that, if he means to contest the right to eject him, he must apply to the Collector of the District or Assistant Collector for that purpose.

Mode of serving notice.

38. The notice shall be issued and served through the office of the tahsildár on application made to him between the first day of January and the first day of April in each year, and the landholder shall pay the cost of service : it shall be served personally on the tenant, if practicable ; but if he cannot be found, service may be made by affixing the notice to his usual place of residence.

Effect of failure of tenant to institute suit to contest liability to ejectment.

39. (a) The tenant on whom such notice has been served, may, within thirty days next after the service, make an application to the Collector of the District or Assistant Collector, contesting his liability to be ejected.

(b) When such an application is made, the Collector of the District or Assistant Collector shall proceed to determine the question between the parties.

(c) On the determination of such question adversely to the tenant, or, where no application under this section has been made within the said period of thirty days, on the expiration of such period, the tenancy of the land in respect of which the notice has been served shall cease :

Provided

Provided that when such question has been determined or such period has expired, as the case may be, before the first day of May next following the making of the application under section 38, the tenancy shall continue until and cease upon that day :

Provided also that the tenancy shall not cease under this section when, after the service of the notice, the landholder authorizes the tenant to continue in the occupation of the land.

40. If the landholder require assistance to eject the person whose tenancy is alleged to have ceased under the provisions of section 39, he may, within fifteen days from the date of such cessation, apply to the Collector of the District or Assistant Collector for such assistance, and the Collector of the District or Assistant Collector shall order the ejectment of such tenant if he is satisfied—

Procedure to
enforce
ejectment.

(a) that the notice was duly served on such tenant under section 38 ;

(b) that he has not been authorized by the landholder to continue in occupation ;

(c) that the tenant has not made the application mentioned in section 39, clause (a) ; or

(d) that if such application has been made, the question has been determined adversely to the tenant :

Provided that no such application for the ejectment of a farmer on the determination of a lease shall be received if the lease be of the kind in which an advance has been made by the leaseholder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In all such cases the landholder must proceed by suit in the Civil Court.

41. If the landholder expressly authorize the tenant, on whom the notice of ejectment has been served, or against whom any proceedings in ejectment under section 40 have been taken, to remain in occupation of the land, and to prepare it for the harvest, the proceedings shall become void.

Notice of
ejectment
when void.

Rights of
ejected
tenant.

42. (a) Any tenant ejected in accordance with the provisions of this Act, shall be entitled to any growing crops or other ungathered products of the earth belonging to the tenant, and growing on the land at the time of his ejection, and to use the land for the purpose of tending and gathering in such crops or other products, paying adequate rent therefor.

Effect of
tender by
landholder
of payment
for crops.

(b) Provided that, if the landholder desire to purchase such crops or other products, he may tender their price to the tenant; and thereupon the right of the tenant to such crops and other products, and to use the land for the purpose aforesaid, shall cease.

Power to
determine
rent and
price.

(c) In the case of a dispute under this section, the Collector of the District or Assistant Collector may, on the application of the landholder or tenant, award the rent and price so payable; and the amount of such award, or of any tender accepted under this section, shall be recoverable as an arrear of rent by suit under this Act.

Set-off of
rent.

(d) The rent, if any, payable to the landholder by the tenant at the time of his ejection may be set-off against the price of the said crops or other products.

Application
for officer to
divide
produce or
appraise crop.

43. (a) Whenever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the cultivator and landholder, either personally or by agent,

if either landholder or tenant, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop,

an application may be presented by either party to the Collector of the District or Assistant Collector, requesting that a proper officer be deputed to make the division, estimate or appraisement.

Procedure
on such
application.

(b) On receiving such application, the Collector of the District or Assistant Collector shall issue a written notice to the opposite party or his agent, to

attend

attend on the date and at the time specified in the notice, and shall depute an officer before whom such division, estimate or appraisal shall be made.

(c) If on or before the date appointed, the dispute has not been amicably adjusted, three residents of the village or neighbourhood shall be appointed assessors; one by each of the parties, and one by the officer deputed to divide the grain, or estimate or appraise the crops, and the officer deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops.

(d) Provided that, if either party fail to attend, the officer deputed shall nominate an assessor on his behalf.

(e) The officer deputed shall report his proceedings to the Collector of the District or Assistant Collector, who shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

(C).—*Compensation for Improvements made by Tenants.*

44. If any tenant, or any person from whom he has inherited or purchased, make any such improvements on the land in his possession as are hereinafter mentioned, neither he nor his representative shall be ejected from the same land without payment of compensation for such improvements.

Tenant's
right to com-
pensation for
improve-
ments.

Explanation.—In this section the word “tenant” does not include a thékadár or a katkanadár, and the word “improvements” means works by which the annual letting value of the land has been, and at the time of demanding compensation continues to be, increased, and comprises—

(a) tanks, wells and other works for the storage, supply or distribution of water for agricultural purposes,

(b) works for the drainage of land, or for the protection

protection of land from floods or from erosion or other damage by water,

(c) the reclaiming, clearing, or enclosing of lands for agricultural purposes,

(d) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto.

Notwithstanding anything hereinbefore contained, no tenant, other than a tenant at fixed rates or an occupancy-tenant, shall be entitled to compensation in respect of any improvement made without the consent of the landholder after this Act comes into force.

Mode of
making com-
pensation.

45. Such compensation may, at the option of the landholder or his representative, be made—

1st, by payment in money ;

2nd, by a rent to be charged on the land ;

3rd, by the grant of a beneficial lease of the land, by the landholder or his representative, to the tenant or his representative ;

4th, partly by one or by any two of the said ways, and partly by the others or other of the same ways.

Settlement of
difference as
to amount or
value of
compensa-
tion.

46. In case of difference as to the amount or value of the compensation tendered, either party may apply to the Collector of the District or Assistant Collector stating the matter in dispute, and requesting a determination thereof.

On receiving such application, the Collector of the District or Assistant Collector shall—

(a) cause notice thereof to be served on the other party,

(b) take such evidence as the parties or either of them may adduce,

(c) make such further inquiry as the Collector of the District or Assistant Collector may deem necessary, and

(d) determine the amount of the payment in money, and the amount and incidence of the rent-charge,

charge, and the terms of the lease, or any of such matters.

47. In determining the amount or value mentioned in section 46, or the terms of such lease, the Collector of the District or Assistant Collector shall take into account any assistance given to the tenant by the landholder either directly in money, material or labour, for the purpose of making such improvements, or indirectly by allowing the tenant to hold at a favourable rate of rent.

Considerations in determining compensation.

(D.)—Compensation for wrongful Acts and Omissions.

48. Every tenant from whom any sum is exacted in excess of the rent specified in his lease or payable under the provisions of this Act,

Right of tenant to compensation for exactions in excess of rent or for withholding receipt.

and every tenant from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the landholder compensation not exceeding double the amount so exacted or paid.

Receipts for rent shall specify the period or crop on account of which the rent is acknowledged to have been paid;

Contents of receipt.

and any refusal to make such specification shall be held to be a withholding of a receipt.

Explanation.—In this section the word “tenant” does not include a thékadár or a katkanadár.

49. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, he shall be entitled to recover from the person guilty of such extortion such further compensation, not exceeding the sum of two hundred rupees, as the Collector of the District or Assistant Collector thinks reasonable.

Damages for extorting payment of rent by duress.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person guilty of such extortion may be subject under the Indian Penal Code.

Liability to punishment for extortion not affected.

(E.)—Deposit

(E.)—*Deposit of Rent in Court.*

Deposit of
amount ten-
dered by
tenant and
refused.

50. If any tenant tenders to the landholder full payment of the rent due from him, and if the amount so tendered be not accepted, and a receipt for the amount forthwith granted, the tenant may thereupon apply to the Collector of the District or Assistant Collector for leave to deposit such amount in his court to the credit of the landholder.

Form and
verification of
application.

51. The application to the Collector of the District or Assistant Collector shall be as nearly as may be in the form (A) in the first schedule hereto annexed, and shall be verified in the manner hereinafter prescribed for the verification of plaints.

Penalty for
false state-
ment.

And the person making the verification shall be punishable, if the application contain any averment which he knows or believes to be false, or does not know or believe to be true.

Notice to
issue on
deposit being
made.

52. The Collector of the District or Assistant Collector shall receive the amount which the tenant desires to deposit, and shall thereupon issue to the person to whose credit it has so been deposited, a notice in English or the vernacular language of the district, in the form (B) in the first schedule hereto annexed, or to the like effect.

And such deposit shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

Mode of
serving n-
tice.

53. Such notice shall be served through the tahsildár upon the person to whom it is addressed, or upon his recognized agent.

In their absence, the notice shall be affixed at the *chaupál*, or other conspicuous place in the village in which the land for which the rent is due is situate.

Payment to
person served
with notice
on his appli-
cation.

54. If at any time before the expiration of three years from the date of the deposit the person on whom such notice is served, or his recognized agent, appears, and applies that the money in deposit be paid to him, it shall be paid accordingly, unless it has been repaid

or

or paid in accordance with the provisions next hereinafter contained.

55. If no application be made by such person or his recognised agent, the sum shall be repaid to the depositor on the expiration of three years from the date of the deposit. Refund to depositor.

And at any time before the expiration of such period, on the joint application of the depositor and the person to whose credit the said sum was deposited, such sum shall be paid in such manner as the joint applicants desire.

55A. When, owing to the death of the landlord or other cause, two or more persons severally claim the right to collect the rent from a tenant, the tenant may apply to the Collector of the District or the Assistant Collector for leave to deposit in court the full amount of rent due from him, and such deposit, if made with the leave of the Collector or Assistant Collector, shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent. Deposit in court of rent claimed by two or more persons.

The Collector of the District or Assistant Collector may, after such enquiry as he thinks necessary, direct payment of the amount deposited to such one of the persons claiming such rent as appears to him entitled to receive the same, or may order the same to remain in deposit pending decision by a competent Court.

No suit shall lie against the Secretary of State for India in Council or against any officer of Government in respect of any payment made under this section, but nothing herein contained shall affect the right of any person entitled to such payment to recover the amount thereof from any other person to whom it has been paid.

CHAPTER III.

DISTRESS.

56. The produce of all land in the occupation of Produce of land hypo-
a

theanted
rent

a cultivator shall be deemed to be hypothecated for the rent payable in respect of such land; and until such rent has been satisfied, no other claim on such produce shall be enforced by sale in execution of decree or otherwise;

Recovery of
arrears by
distress

and when an arrear of rent is due from any cultivator, the person entitled to receive rent immediately from him may, instead of suing for the arrear as hereinafter provided, recover the same by distress and sale of the produce of the land in respect of which the arrear is due, under the rules contained in this chapter.

57. Provided—

Distress of
produce
barred by
security
given for
rent.

(a) that when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to be distrained:

Sharer when
entitled to
distrain.

(b) that no sharer in any mahál shall have power to distrain upon any cultivator unless he is entitled to collect the whole rent from such cultivator:

Distress by
manager.

(c) that no sharer in a joint undivided mahál shall exercise such power otherwise than through a manager authorized to collect the rents of the whole mahál on behalf of all the sharers therein:

Distress in
pattidári
maháls

(d) that in pattidári maháls distress shall be made only through a lambardár, or, where the rent of a patti is not collected by a lambardár, through the pattidár who is entitled to collect the rent.

No distress
for over-due
arrear, nor,
without
agreement,
for excess
over past
year's rent.

58. A distress shall not be made for any arrear which has been due in respect of any land for a longer period than one year;

nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless the rent has been enhanced under the provisions hereinbefore contained, or by order of a Settlement-officer, or unless the cultivator has agreed to pay such excess and such agreement has been attested before the kánungo.

Distress by
managers
under Court

59. The power to distrain conferred by sections 56 and 57 may be exercised by managers under the Court

Court of Wards and other persons lawfully entrusted with the charge of immoveable property ; of Wards, &c.

and also by the agents employed by such persons as aforesaid, in the collection of rent, if expressly authorized by power-of-attorney in that behalf :

If any wrongful act is committed by any such agent, under colour of the exercise of the said power, such agent and his principal shall be jointly and severally liable to make compensation for such act. Liability for illegal act.

60. When any person, empowered to distrain property under section 56, section 57 or section 59, employs a servant or other person to make the distress, he shall give him a written authority for the same, and the distress shall be made in the name of the person giving such authority. Written authority to servants employed to distrain.

61. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with power to distrain under the provisions of this Act. Standing crops and crops gathered liable to distress.

But no such crops or products, other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to be distrained under this Act. Exception.

62. Before or at the time when a distress is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made. Defaulter to be served with written demand and account.

The demand and account shall, if practicable, be served personally on the defaulter ; or, if he abscond or conceal himself, so that they cannot be so served, shall be affixed at his usual place of residence. Mode of service.

63. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property Distress to be proportionate to property

List of property to be prepared and copy served on owner.

property as aforesaid equal in value, as nearly as may be, to the amount of the arrear and the costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

Standing crops, &c., when distrained, may be reaped and stored.

64. (a) Standing crops and other ungathered products may, notwithstanding the distress, be reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

(b) If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood.

(c) In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

Sale of products which cannot be stored.

(d) Crops or products which, from their nature, do not admit of being stored, may be sold before they are reaped or gathered, under the rules hereinafter provided; but in such case, the distress shall be made at least twenty days before the time when the crops or products, or any part of the same, are fit for reaping or gathering.

Assistance to distrainer opposed or apprehending resistance.

65. If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Collector of the District or Assistant Collector, who may, if he thinks necessary, depute an officer to assist the distrainer in making the distress.

Distress to be withdrawn on tender of arrear and expenses before sale.

66. If at any time after property has been distrained and before the day fixed for putting it up to sale as hereinafter provided, the owner of the property tenders payment of the arrear demanded of him, and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

67. Within

67. Within five days from the time of the storing of any distrained crops or products, Application for sale.

or, if the crops or products do not, from their nature, admit of being stored, within five days from the time of making the distress,

the distrainer shall apply for sale of the same to the officer for the time being authorized by the Local Government to sell distrained property within the tahsíl in which they are situate.

68. The application shall be in writing and shall contain— Contents of application.

(a) an inventory or description of the property distrained,

(b) the name of the defaulter and his place of residence,

(c) the amount due, and the date of the distress, and

(d) the place in which the distrained property is.

Together with the application, the distrainer shall deliver to the said officer the fee for the service of a notice upon the defaulter as hereinafter provided. Fee for service of notice

69. Immediately on receipt of the application, the said officer shall send a copy of it to the Collector of the District or Assistant Collector, Procedure on receipt of application.

and shall serve a notice in the form (C) contained in the first schedule hereto annexed, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector of the District or Assistant Collector, within the period of fifteen days from the receipt of the notice.

He shall at the same time send to the Collector of the District or Assistant Collector, for the purpose of being put up in his office and in the office of the tahsildár, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon

charged

charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain—

(a) a description of the property,

and shall specify—

(b) the demand for which it is to be sold, and

(c) the place where the sale is to be held.

Suspension of
sale on re-
ceipt of Col-
lector's cer-
tificate of in-
stitution of
suit

70. If a suit is instituted before the Collector of the District or Assistant Collector in pursuance of the aforesaid notice, the Collector of the District or Assistant Collector shall send to the officer referred to in section 67, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of such suit;

and on such certificate being received by, or presented to, the said officer, he shall suspend the sale.

Suit to con-
test dis-
trainer's
demand
before issue
of notice of
sale.

71. A person whose property has been distrained in manner hereinbefore provided may, immediately after the distress, and before the issue of notice of sale, institute a suit to contest the demand of the distrainer.

When such suit is instituted, the Collector of the District or Assistant Collector shall proceed in the manner prescribed in the last preceding section.

If, thereafter, application for the sale of the property is made to the said officer, he shall send a copy of the application to the Collector of the District or Assistant Collector, and suspend further proceedings, pending the decision of the case.

Distress when
to be with-
drawn.

72. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with a surety, binding himself to pay whatever sum may be adjudged to be due from him, with interest and costs of suit;

and when such bond is executed, the Collector of the District or Assistant Collector shall give to the owner of the property a certificate to that effect, and,
if

if so requested, shall serve the distrainer with notice of the same ;

and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Collector of the District or Assistant Collector, the property shall be released from distress.

73. If the institution of a suit to contest the demand of the distrainer has not been certified, in manner hereinbefore provided, to the said officer, on or before the day fixed in the proclamation of sale, he shall, unless the said demand, with such costs of the distress as are allowed by him, be discharged in full, proceed, in manner hereinafter mentioned, to sell the property or such part of it as may be necessary to satisfy the demand with the costs of distress and sale.

When sale
may be pro-
ceeded with.

74. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the said officer is of opinion that it is likely to sell there to better advantage.

Place of sale.

The property shall be sold by public auction, in one or more lots, as the officer holding the sale may think advisable ;

Manner of
sale.

and if the demand, with the costs of distress and sale, be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

Withdrawal
of distress
when demand
and costs
satisfied.

75. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) be not offered for it, and if the owner of the property, or some person authorized to act on his behalf, apply to have the sale postponed until the next day, or, if a market be held at the place of sale, the next market-day, the sale shall be postponed until such day and shall be then completed whatever price may be offered for the property.

If fair price
be not
offered, sale
may be post-
poned and
shall be then
completed.

76. The price of every lot shall be paid for in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks necessary ;

Payment of
purchase-
money.

and,

Re-sale on
default.

and, in default of such payment, the property shall be put up again and sold, and the deficiency in price (if any) which may happen on such second sale and all expenses attending such second sale shall, at the instance either of the distrainer or the owner of the property, be recoverable from the defaulter under the rules hereinafter contained for the execution of a decree for rent.

Certificate to
purchaser.

When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

Deduction,
from pro-
ceeds, of costs
of sale.

77. From the proceeds of every sale of distrained property under this Act, the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall send the amount so-deducted to the Collector of the District or Assistant Collector.

Payment of
distrainer's
expenses.

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress, and of the issue of the notice and proclamation of sale prescribed in section 69, to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

Discharge of
arrear with
interest.

The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale;

Surplus.

and the surplus (if any) shall be delivered to the person whose property has been sold.

Sale-officers
and employes
prohibited
from pur-
chasing.

78. Officers holding sales of property under this Act, and all persons employed by or subordinate to such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Report of
irregularities
by distrainer.

79. Officers holding sales under this chapter are required to bring to the notice of the Collector of the District or Assistant Collector any material irregularities committed by distrainers under colour of this Act;

Postpone-
ment of sale,
and report to

and if, in any case, on proceeding to hold any
such

such sale, the officer holding it find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report the case to the Collector of the District or Assistant Collector, who shall thereupon direct the issue of another notice and proclamation of sale under section 69, or pass such other order as he thinks fit.

Collector when owner has not received due notice.

Order of Collector.

80. When an officer goes to any place for the purpose of holding a sale under this Act, and no sale takes place, either for the reason stated in section 79, or because the demand of the distrainer has been previously satisfied without any intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property.

Levy of charge when sale-officer attends, and no sale takes place.

If the distrainer's demand be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

Recovery from owner.

In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of his property under the warrant of the Collector of the District or Assistant Collector :

Recovery from distrainer.

Provided that in no case shall a larger amount than ten rupees be recoverable under this section.

Limit to charge.

81. When a suit has been instituted to contest the demand of a distrainer, and the distrained property has not been released on security, if the demand or any portion of it is adjudged to be due, the Collector of the District or Assistant Collector shall issue an order to the officer authorizing the sale of such property ;

Order of sale when amount adjudged due.

and, on the application of the distrainer within five days from the receipt of such order by the officer, such officer shall publish a second proclamation in the manner prescribed in section 69, fixing another

Second proclamation of sale.

day

day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation ;

Sale on failure to pay debt and costs.

and, unless the amount adjudged to be due with the costs of distress be paid, shall proceed to sell the property in the manner hereinbefore provided.

In suit to contest his demand, distrainer to prove arrear.

82. (a) In all suits instituted to contest the distrainer's demand, he shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount under the provisions hereinafter contained.

Recovery of amount decreed in favour of distrainer.

(b) If the demand or any part thereof is found to be due, the Collector of the District or Assistant Collector shall make a decree for the amount in favour of the distrainer, and such amount may be recovered by sale of the property, as provided in the last preceding section, if the distress has not been withdrawn ;

and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter,

or if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

Compensation in case of vexatious distress.

(c) If the distress is adjudged to be vexatious or groundless, the Collector of the District or Assistant Collector, besides directing the release of the distrained property, may award such compensation to the plaintiff as the circumstances of the case require.

Suit by person claiming property distrained for arrears alleged to be due from another.

83. (a) If any person claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, the claimant may institute a suit against the distrainer and such other person, to try the right to the property, in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

(b) When

(b) When any such suit is instituted, the property may be released upon security being given for the value of the same.

Release of property on security being given.

(c) If the claim is dismissed, the Collector of the District or Assistant Collector shall make an order for the sale of the property, or for the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

Order of Collector when claim dismissed.

(d) If the claim is upheld, the Collector of the District or Assistant Collector shall decree the release of the distrained property with costs, and such compensation (if any) as the circumstances of the case require :

Decree for release and compensation when claim upheld.

(e) Provided that no claim to any produce of land liable to distress under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any civil Court prevail against such prior claim.

Saving of prior claim of person entitled to rent of land.

84. If, in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distrain for such arrears is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by him before and up to the time of the commencement of the suit shall be enquired into, and in deciding the suit the result of such inquiry shall be taken into consideration :

Procedure where right to distrain is claimed by person other than distrainer.

Provided that the decision of the Collector of the District or Assistant Collector shall not affect the right of any person who may have a legal title to the rent of the land to establish his title by suit in the civil Court if instituted within one year from the date of the decision.

Saving of right to sue in civil Court.

85. If any person whose property has been distrained

Persons prevented from coming in time

to save property from sale may sue for damages.

distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing a suit to contest the demand or to try the right to the property, as the case may be, within the period allowed by section 69 or 83, and his property is in consequence sold, he may, nevertheless, institute a suit under this Act to recover compensation for such distress and sale.

Wrongful acts of distrainer.

86. If any person empowered to distrain property or employed for the purpose under a written authority by a person so empowered, distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act,

or if any distrained property is lost, damaged, or destroyed by reason of the distrainer not having taken proper precautions for the due keeping and preservation thereof,

or if the distress is not immediately withdrawn when it is required to be withdrawn by any provision of this Act,

the owner of the property may institute a suit under this Act to recover compensation for any injury which he has thereby sustained through any act or omission mentioned in the former part of this section.

Suit by owner against person distraining or selling without authority.

87. If any person not empowered to distrain property under section 56, 57 or 59, nor employed for the purpose under a written authority by a person so empowered, fraudulently distrains or sells, or causes to be sold, any property under colour of this Act, the owner of the property so distrained or sold may institute a suit under this Act to recover compensation from such person for any injury which the plaintiff has sustained from the distress or sale,

Penalty in addition to damages.

and the defendant shall be held to have committed criminal trespass, and shall be subject to the penalties provided for that offence by the Indian Penal Code, in addition to any damages which may be awarded against him in such suit.

88. Provided

88. Provided that every suit instituted under any of the three last preceding sections shall be commenced within the period allowed by section 94.

Limitation of suits under sections 85, 86, 87.

89. (a) If any person resists a distress of property duly made under this Act, or forcibly or clandestinely removes any distrained property, the Collector of the District or Assistant Collector in charge of the Sub-division, upon complaint being made within fifteen days from the date of such resistance or removal, may cause the person accused to be arrested and brought with all convenient speed before the Collector or Assistant Collector, who shall, if possible, proceed forthwith to try the case.

Procedure in case of resistance of distress.

(b) If the case cannot be at once heard, the Collector of the District or Assistant Collector may, if he think fit, require the party arrested to give security for his person, and, in default of such security, may commit him to the civil jail until the case is tried,

and if the offence be proved and the offender be the owner of the property concerned, the Collector of the District or Assistant Collector may order him to be imprisoned in the civil jail for a term not exceeding six months, unless the whole arrear due to the distrainer, with all reasonable expenses and costs, is previously to the expiration of such term paid or levied under warrant of the Collector of the District or Assistant Collector by distress and sale of the property of the offender.

(c) If the offender be not the owner of the property concerned, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment in the civil jail for a term which may extend to two months.

90. All proceedings of officers distraining, or assisting distrainers, or holding sales, under this chapter, shall be subject to the revision and orders of the Collector of the District or Assistant Collector in charge of a Sub-division of the District.

Proceedings of officers subject to revision and orders of Collector.

CHAPTER IV.

CHAPTER IV.

PROCESS.

Mode of
serving pro-

91. (a) Every process issued by a Collector of a District or Assistant Collector under this Act shall be under his seal and signature, and shall be served or executed by the Nazir, or by such other officer as the Collector of the District or the Assistant Collector may direct, at the cost of the party at whose instance it is issued.

Deposit be
fore issue.

(b) The amount of such cost, and, in the case of summons to a witness, the sum required for his travelling expenses, shall be deposited in Court before the process is issued :

Power to
direct service
gratis.

(c) Provided that, if in any case the Collector of the District or the Assistant Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

Punishment
for resisting
process.

92. Any resistance or opposition to the lawful process of a Collector of the District or Assistant Collector under this Act may be punished by him according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice.

Power to
issue sum-
mons and
warrant.

When, in any such case, the offender is not present, the Collector of the District or Assistant Collector may summon him to answer to the charge: and, if after due service of the summons he fails to attend, may issue a warrant for his arrest.

CHAPTER V.

JURISDICTION OF COURTS.

Suits cogniz-
able by reve-
nue Courts
only.

93. Except in the way of appeal as hereinafter provided, no Courts other than Courts of Revenue shall take cognizance of any dispute or matter in which any suit of the nature mentioned in this section might be brought, and such suit shall be heard and determined in the said Courts of Revenue

in

in the manner provided in this Act, and not otherwise :

(a) suits for arrears of rent, or, where rent is payable in kind, for the money-equivalent of rent, on account of land or on account of any rights of pasturage, forest-rights, fisheries or the like ;

(b) suits to eject a tenant for any act or omission detrimental to the land in his occupation or inconsistent with the purpose for which the land was let ;

(c) suits to cancel a lease for the breach of any condition binding on the tenant, and which, by law, custom or special agreement, involves the forfeiture of the lease ;

(cc) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (b) or clause (c) ;

(d) suits for the recovery of any over-payment of rent, or for compensation under section 48 or 49 ;

(e) suits for compensation for withholding receipt for rent paid ;

(f) suits for contesting the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in the exercise of the said power, or for compensation for wrongful acts or omissions of a distrainer ;

(g) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues for which the co-sharers may be responsible to the lambardár ;

(h) suits by recorded co-sharers for their recorded share of the profits of a mahál, or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts ;

(i) suits by muáfidárs, or assignees of the Government-revenue, for arrears of revenue due to them as such ;

(j) suits by taluqdárs and other superior proprietors for arrears of revenue due to them as such ;

(k) suits

(k) suits by recorded co-sharers to recover from a recorded co-sharer who defaults arrears of revenue paid by them on his account.

Limitation of suits under this Act.

94. Suits for arrears of rent or revenue, or for a share of the profits of a mahál, or of village-expenses or other dues, shall not be brought after three years from the day on which the arrears or share became due.

Suits relating to distress, not being suits to contest the demand or to try the right to the property, shall not be brought after three months from the day on which the right to sue accrued :

All other suits must be brought within one year from the day on which the right to sue accrues, unless otherwise specially provided for in this Act.

The day on which the arrears become due or the day on which the right to sue accrues (as the case may be) shall be excluded in computing the periods of limitation prescribed by this section.

In the absence of any express agreement among the co-sharers and of any order by the Settlement-officer under the North-Western Provinces Land-revenue Act, 1873, section 65, clause (g), the Board may from time to time, with the previous sanction of the Local Government, make rules for fixing the dates on which profits shall be divisible by the lam-bardárs.

Applications cognizable by revenue Courts only.

95. No Courts other than Courts of Revenue shall take cognizance of any dispute or matter on which any application of the nature mentioned in this section might be made : and such applications shall be heard and determined in the said Courts in manner provided under this Act, and not otherwise :—

(a) Application to determine the nature and class of a tenant's tenure, under section 10.

(b) Application by a landholder, or his agent, to compel a patwári to produce his accounts relating to land.

(c) Application to resume rent-free grants under section

section 30, or to assess to rent land previously held rent-free.

(*d*) Application from a landholder to eject a tenant under section 35, or to have a notice of ejectment issued and served under section 38.

(*e*) Applications made by a tenant, under section 39.

(*f*) Application from a landholder, under section 40, for assistance to eject a tenant.

(*g*) Application from a tenant or landholder to determine the value of any standing crop, or ungathered products of the earth, belonging to the tenant and being on the land at the time of his ejectment, under section 42.

(*h*) Application by a landholder to determine rent payable for land used by a tenant for the purpose of tending or gathering in the crop, under section 42.

(*i*) Application by a landholder or tenant for assistance in the division or appraisement of a standing crop, under section 43.

(*j*) Application by a landholder or tenant to determine compensation for improvements of land.

(*k*) Application by a tenant for leave to deposit rent.

(*l*) Application for enhancement or determination of rent.

(*m*) Application for compensation for wrongful dispossession.

(*n*) Application for the recovery of the occupancy of any land of which a tenant has been wrongfully dispossessed.

(*o*) Application for abatement of rent.

(*p*) Application for leases or counterparts, and for the determination of the rates of rent at which such leases or counterparts are to be delivered.

(*q*) Application under section 7 to have the holding of an ex-proprietary tenant divided off.

(*r*) Application under section 22A to survey land.

(*s*) Application

(s) Application under section 33A to have a notice of relinquishment declared invalid.

(t) Application to take out of deposit any amount deposited under section 55A.

For the purposes of the Court-fees Act, 1870, applications under clauses (c), (l), (m), (n), (o) and (p) of this section shall be deemed to be plaints in suits.

Limitation of process of execution on applications.

95A. When any order has been made on an application under this Act, no process for the execution of such order shall be issued on an application made after the lapse of one year from the date of such order, except when special provision is otherwise made in this Act.

Points of procedure relating to applications under section 95.

96. (a) All applications under section 95 shall be made in the district in which the land, crops or products referred to is or are situate.

(b) All orders passed on applications under section 95 shall be proved in the same manner, and, when proved, shall have the same effect, as if they were judgments of the civil Courts.

(c) In cases wherein a specific sum of money is adjudged to be due, or any costs or damages are awarded, all such orders may be executed by any process in use for the recovery of an arrear of revenue or rent.

(d) In cases wherein possession of immoveable property is adjudged, the officer making the award may deliver over possession in the same manner, and with the same power, in regard to contempts, resistance and the like, as may be lawfully exercised by the civil Courts in execution of their own decrees.

(e) Applications under clauses (m) and (n) of section 95 shall not be brought after six months from the date of the wrongful dispossession.

Reference to arbitration.

96A. All suits and applications under this Act may, with the consent of the parties, be referred to arbitration under section 220 to section 231 (both inclusive) of the North-Western Provinces Land-revenue Act, 1873.

97. The

97. The Local Government may invest any officer with the powers of an Assistant Collector of the first or second class under this Act, and may at any time withdraw such powers.

Power to invest officers with Assistant Collector's powers, and withdraw them.

98. Assistant Collectors of either class shall have, as such, power to try suits and applications of the following descriptions:—

Suits and applications cognizable by Assistant Collectors.

(a) suits for arrears of rent or the money-equivalent of rent on account of land, or on account of any rights of pasturage, forest-rights, fisheries or the like;

(b) suits for compensation for withholding receipts for rent paid, under section 48;

(c) suits to contest the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in exercise of the said powers, or for compensation for wrongful acts or omissions of a distrainer;

(d) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues, for which the co-sharers may be responsible to the lambardár;

(e) suits by muáfídárs or assignees of the Government-revenue for arrears of revenue due to them as such;

(f) suits by taluqdárs or other superior proprietors for arrears of revenue due to them as such;

(g) applications by a landholder, or by an agent employed by a landholder, to compel the production of accounts by patwáris;

(h) applications by a tenant or landholder to determine the value of any standing crops or ungathered products of the earth, and being on the land at the time of his ejection, under section 42;

(i) applications by a landholder to determine the amount of rent payable by a tenant using land for the purpose of tending or gathering in crops, under section 42;

(j) applications

(*j*) applications by a landholder or a tenant for assistance in the division or appraisement of standing crops, under section 43;

(*k*) applications by tenants for leave to deposit rent;

(*l*) suits under section 93, clause (*k*), to recover arrears of revenue;

(*m*) applications under section 22A to survey land.

Additional
suits and
applications
triable by
Assistant
Collectors,
first class.

99. Assistant Collectors of the first class, in addition to the suits and applications specified in section 98, shall have power to try suits and applications of the following descriptions:—

(*a*) suits to eject a tenant for any act or omission detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let;

(*b*) suits to cancel a lease for any breach of any condition binding on the tenant;

(*bb*) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (*a*) or clause (*b*);

(*c*) suits for the recovery of any over-payment of rent or for compensation, under section 48 or section 49;

(*d*) suits by co-sharers for their shares of the profits of a mahál or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(*e*) applications by a landholder to eject a tenant, under section 35;

(*f*) applications under section 39 by a tenant contesting notice of ejectment;

(*g*) applications by a landholder under section 40, for assistance to eject a tenant on whom notice of ejectment has been served;

(*h*) applications for compensation for wrongful dispossession;

(*i*) applications

(i) applications by a landholder or tenant to determine the amount to be paid as compensation for improvements;

(j) applications to recover the occupancy of any land from which a tenant has been wrongfully dispossessed by the landholder;

(k) applications under section 30 for the resumption of rent-free grants or for the assessment to rent of land hitherto held rent-free;

(l) applications under section 7 to have the holding of an ex-proprietary tenant divided off;

(m) applications under section 33A to have a notice of relinquishment declared invalid;

(n) applications to take out of deposit amounts deposited under section 55A.

100. In addition to the powers specified in sections 98 and 99, an Assistant Collector of the first class, specially empowered by Government in this behalf, shall have power to try the following applications:—

Additional applications triable by Assistant Collector, first class, with special powers.

(a) applications for enhancement or determination of rent;

(b) applications for abatement of rent;

(c) applications for leases or counterparts, and the determination of the rates of rent at which such leases or counterparts are to be delivered;

(d) applications to determine the nature or class of a tenant's tenure.

101. The Collector of the District, or any Assistant Collector in charge of a sub-division of a district, may make over any case, or class of cases, for inquiry and decision, from his own file, to any of his subordinates competent to deal with such case or class of cases under the provisions of this Act.

Power to make over cases.

102. Collectors of Districts, and Assistant Collectors in charge of sub-divisions of districts, may, respectively, withdraw any case or class of cases from any officers subordinate to them, and may deal with such case or class of cases themselves, or refer it for disposal

Power to withdraw cases.

disposal to any other such Revenue-officer competent to deal with the same under the provisions of this Act.

Powers exercisable by Collector of District.

103. The Collector of the District may exercise—
(a) all powers given by this Act to Collectors of Districts,

(b) all powers which by this Act are conferred, or can be conferred, on Assistant Collectors.

Investment of officer in charge of sub-division with powers of Collector of District.

The Local Government may invest any officer in charge of a sub-division of a district with all or any of the powers conferred by this Act on a Collector of a District.

Mode of conferring powers.

In conferring powers under this Act, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

CHAPTER VI.

PROCEDURE IN SUITS UP TO JUDGMENT.

Place of instituting suits.

104. Suits under this Act shall be instituted in the district in which the subject of the suit, or some part thereof, is situate,

Plaint.

and all such suits shall be commenced by presenting to the Court a plaint, which shall contain—

(a) the name, description and place of abode of the plaintiff;

(b) the name, description and place of abode of the defendant, so far as they can be ascertained;

(c) the subject-matter of the claim, and its amount or value computed according to the Court-fees Act, 1870; and

(d) the date on which the right to sue accrued.

Managers of maháls to be, for purpose of litigation, deemed landholders.

105. For the purpose of suing or being sued under this Act, the managers of maháls, whether held under the Court of Wards or under direct management, shall be deemed to be landholders.

Suits by co-sharers in undivided property.

106. No co-sharer in an undivided property shall, in that character, be entitled separately to sue a tenant

tenant under this Act, unless he is authorized to receive from such tenant the whole of the rent payable by such tenant; but nothing in this section shall affect any local custom or any special contract.

107. The plaint shall be presented by the plaintiff, or by an agent duly authorized on his behalf, who has personal knowledge of the facts of the case, or by an agent accompanied by a person who has such knowledge.

Plaint by whom presented.

The plaint shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following, or to the like effect:—

Verification of plaint.

“I, *A. B.*, the plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my knowledge and belief.”

If the plaint contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

False averment.

108. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Court at the time of presenting his plaint.

Document relied on by plaintiff to be presented with plaint.

Unless such document be so delivered, or its non-production be sufficiently excused, or unless the Court see fit to extend the time for producing the same, it shall not afterwards be admitted.

Admission afterwards.

109. If the plaintiff require the production of any document in the possession or power of the defendant, he may, at the time of presenting his plaint, deliver to the Court a description of the document, in order that the defendant may be required to produce the same.

Procuring production of document in possession of defendant.

110. If the suit be for the recovery of an arrear of rent or revenue, or of a share of profits or village-expenses, or other dues, under section 93, the plaint shall specify the name of the village and estate, and of the pargana or other local division, in which the land is situate:

Plaint in suits for arrears of rent.

and

and, if the suit be for an arrear of rent alleged to be due from any tenant, the plaint shall also specify the quantity of land, and (where fields have been numbered in a Government-survey) the number of each field, and yearly rent of the land; the amount (if any) received on account of the year for which the claim is made; and in all cases coming under this section the plaint shall specify the amount in arrear, and the time in respect of which it is alleged to be due.

Plaint in
suits for
ejectment.

111 If the suit be for the ejectment of a tenant from any land, the plaint shall describe (as circumstances may require) the extent, situation and designation of the land; and, if necessary for its identification, shall set forth its boundaries.

Return or
amendment
of plaint.

112. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Court may, at its discretion, return it to the plaintiff, or allow it to be amended.

Court may
dismiss or add
parties.

112A. The Court may, on or before the first hearing upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Consent of
person added
as plaintiff.

No person shall be added as a plaintiff without his own consent thereto.

Defendants
added to be
served.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and the proceedings as against them

them shall be deemed to have begun only on the service of such summons :

Provided that, when a defendant dies and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

112B. Where a defendant is added, the plaint, if previously filed, shall, unless the Court directs otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

When defendant added, plaintiff to amend.

112C. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for mis-joinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing, and any such objection not so taken shall be deemed to have been waived by the defendant.

Time for taking objections as to non-joinder or mis-joinder of parties.

112D. If the plaint be admitted, the plaintiff shall present as many copies on plain paper of the plaint as there are defendants, unless the Court, by reason of the length of the plaint, or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required in the suit, in which case he shall present such statements.

Procedure on admitting plaint.

Concise statements.

113. If the plaint be in proper form, the Court, except as otherwise hereinafter specially provided, shall direct the issue of a summons to the defendant,

Issue of summons.

and if the plaintiff require the personal attendance of the defendant, and satisfy the Court that such attendance is necessary, or the Court of its own accord require such attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons.

Order for personal attendance or appearance by agent.

If the plaintiff or the Court does not require the personal attendance of the defendant, the summons shall order the defendant to appear either personally

or

or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or is accompanied by a person who has such personal knowledge.

Fixing of day to be specified in the summons.

114. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held,

Order to produce documents.

and the summons shall order the defendant to produce any document in his possession or power of which the plaintiff demands inspection, or upon which the defendant relies in support of his defence.

Order to bring witnesses.

It shall also direct him to bring with him his witnesses, if they are willing to attend without issue of process.

Form of summons.

And it shall be in the form (D) contained in the first schedule hereto annexed, or to the like effect.

Copy or statement annexed to summons. Mode of serving summons.

It shall be accompanied with one of the copies or concise statements mentioned in section 112 D.

115. The summons shall be served by delivering a copy thereof to the defendant personally when practicable;

or, if the copy cannot be delivered to the defendant personally, by affixing copy of the summons to some conspicuous part of his usual residence, and also affixing a copy of the same in the Court.

Endorsement on summons.

116. If the summons be served by delivering a copy to the defendant personally, the Názir shall endorse on the summons the fact of such service.

If personal service be not effected, the Názir shall endorse on the summons the reason of not serving it personally, and how it has been served.

Service of summons in another district.

117. If the usual residence of the defendant be in another district, the summons shall be sent by the public post to the Collector of such district, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

Service when defendant resides out

117A. If the defendant resides out of British India, and has no agent in British India empowered

to

to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post, if there be postal communication between such place and the place where the Court is situate.

of British India and has no agent to accept service.

117B. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent by post or otherwise for the purpose of being served upon the defendant; and if the Resident or Agent return the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of such service.

Service through British Resident or Agent of Government.

118. The amount of the cost of serving the summons,

Deposit of cost of serving summons or warrant.

or, if a warrant be issued as provided in the next following section, of serving the warrant,

shall in all cases be deposited in court by the plaintiff within such time before the issue of such summons or warrant as is fixed by the Court issuing the process.

If the said amount be not so deposited (except where the Court in exercise of the discretion reserved to it in section 91 allows the summons to be served gratis), the case shall be struck out of the list of pending suits;

Effect of failure to deposit.

but in such case the plaintiff may present another plaint at any time within the period allowed by the rules herein contained for the limitation of suits.

119. (a) If in any suit against a tenant for the recovery of an arrear of rent, or in any suit for the recovery of an arrear of revenue, or a share of profits or village-expenses or other dues, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, the plaintiff shall present, with his plaint, an application for the issue of such warrant.

Procedure when plaintiff desires issue of warrant of arrest.

(b) When such application is presented, the Court

Court shall examine the plaintiff or his agent, and inspect the documents adduced by him in support of his claim ; and if *primâ facie* it appear to the Court that the claim is well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Court may issue a warrant for his arrest.

(c) The Court shall fix a reasonable time for the return of the warrant, and the officer entrusted with the service thereof shall, at the time of arresting the defendant, deliver to him one of the copies or concise statements mentioned in section 112D, and a notice requiring him, if he contest the claim, to bring with him any document upon which he relies in support of his defence.

(d) Every warrant issued and notice delivered under this section shall be respectively in the forms (E) and (F) in the first schedule hereto annexed, or to the like effect.

Procedure
after arrest
of defendant.

120. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Court.

Procedure
when defend-
ant is
brought
before Court
under war-
rant.

121. When a defendant is brought before the Court under warrant, the Court shall, with all convenient speed, proceed to try the case in the manner hereinafter provided,

and if the suit cannot be at once adjudicated, the Court may, if it think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is pending, or until execution of the final decree which may be passed thereon,

and may commit him to the civil jail to be there detained until he furnishes such security or deposits such sum as the Court orders.

Form of
security-
bond.

The security-bond shall be in the form (G) contained in the first schedule hereto annexed, or to the like effect.

Procedure
when defend-
ant cannot

122. If the defendant cannot be arrested under the warrant, the Court, on the application of the plaintiff

plaintiff, shall either postpone the case for such period as to it seems proper, in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation, to be affixed in its own office and at the residence of the defendant, appointing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice, at the residence of the defendant.

be arrested
under war-
rant.

If the defendant appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

123. If it appear to the Court that the arrest of the defendant was applied for without reasonable cause, the Court may, in its decree, award to him such sum not exceeding one hundred rupees as it may deem a reasonable compensation for any injury or loss which he has sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

Compensa-
tion for
arrest applied
for without
reasonable
cause.

124. If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case may be struck off, with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules herein contained for the limitation of suits.

Consequence
of neither
party appear-
ing on day
fixed.

125. If on any such day only the defendant appears, the Court shall pass judgment against the plaintiff by default, unless the defendant admits the plaintiff's right to the relief which he claims, in which case the Court shall proceed to give judgment for the plaintiff upon such admission without costs :

Judgment by
default.

Judgment
upon admis-
sion of claim.

Provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

Proviso.

126. If on any such day the plaintiff only appear, the Court, upon proof that the summons or proclamation

If plaintiff
only appear,
Court may
proceed *ex
parte*.

proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff, and any documentary or other evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex parte* against the defendant.

If defendant appear on adjourned hearing, Court may allow him to be heard in answer.

127. If the defendant appear on any subsequent day to which the hearing of the suit is postponed under the last preceding section, the Court may, upon such conditions, if any, as to costs or otherwise as it thinks proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

No appeal from judgment *ex parte* or by default;

128. (a) No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance.

but Court may revive suit and alter or rescind judgment.

(b) But in all such cases, if the party against whom judgment has been given appears, either in person or by agent, if a plaintiff, within fifteen days from the date of the Court's decree, and, if a defendant, within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shows sufficient cause for his previous non-appearance, and satisfies the Court that there has been a failure of justice, the Court may, upon such terms as to costs or otherwise as it thinks proper, revive the suit and alter or rescind the judgment according to the justice of the case.

Adverse party to be summoned.

(c) But no judgment shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

Examination.

129. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned, for sufficient reason, to be recorded by the Court, the Court shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other party or his agent.

130. If

130. If either of the parties be not bound to attend personally, any agent by whom he appears, or any person accompanying such agent, may be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

Examination and cross-examination of agents.

131. At the time of the examination, the defendant may, if he think fit, file a written statement in his defence.

Defendant may file written statement.

Such written statement shall be subscribed and verified in the manner hereinbefore provided for subscribing and verifying plaints, and if it contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

Verification of written statement.
False averment.

132. The examination of the parties or their agents, or such other persons as aforesaid, shall be according to the law for the time being in force relative to the examination of witnesses in the civil Courts.

Mode of examination.

The substance of the examination shall be reduced to writing in the mother-tongue of the presiding officer, and shall be filed with the record.

133. If either of the parties produce a witness on such day, the presiding officer may take the evidence of such witness.

Witness produced may be examined.

134. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit :

Document relied on by defendant to be produced at first hearing.

and unless such document be so delivered, or its non-production be sufficiently excused, or unless the presiding officer see fit to extend the time for delivering the same, it shall not afterwards be admitted.

135. If after the examination required by section 129, and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence

Decree after examination, if no further evidence is required.

evidence adduced, a decree can be properly made without further evidence, the Court shall make its decree accordingly.

Party to attend in person when his agent is unable to answer.

136. If on such examination as aforesaid either party is absent and his agent is unable to answer any material question relating to the case which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the case to a future day, and direct that the party whose agent was unable to answer as aforesaid shall attend in person on such day ;

Judgment or order if he fail to appear.

and if such party fails to appear in person on the day appointed, the Court may pass judgment as in case of default, or make such other order as it deems proper in the circumstances of the case.

Procedure when parties at issue on question requiring evidence.

137. If on such examination as aforesaid it appear that the parties are at issue on any question upon which it is necessary to hear further evidence, the Court shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit ; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Court.

Parties to produce witnesses or procure attendance by summons.

138. The parties shall produce their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day, either to give evidence or to produce a document, he shall apply to the Court in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day ; and the Court shall thereupon issue a summons requiring such witness to attend.

Provisions regarding attendance, examination, &c., of witnesses.

139. The law and rules for the time being in force relating to the evidence of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration and punishment of witnesses, whether parties to the case or not, in cases before the civil Courts, shall, except

so far as may be inconsistent with the provisions herein contained, apply to suits under this Act.

140. If on the day fixed for the trial of any issue neither of the parties appear, the case may be struck off, with liberty to the plaintiff to bring a fresh suit.

Case to be struck off if neither party appears.

If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party, upon such evidence as may be then before the Court.

Trial of issue *ex parte*.

141. When suits under this Act are instituted or defended by agents employed in the collection of rent or management of land, in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such agents ;

Provisions to apply when suits are instituted or defended on behalf of landholders by agents.

and anything which by this Act is required or permitted to be done by a party in person may be done by any such agent as aforesaid.

Processes served on any such agent shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person :

Processes served on such agents.

and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such agent.

142. A female plaintiff or defendant shall not be required to attend in person, if she is of a rank or class which, according to the custom and manners of the country, would render it improper for her to appear in public.

Personal attendance of female plaintiff or defendant when not required.

143. Any party to a suit may employ an authorized agent to conduct the case on his behalf :

Parties may employ agents.

but the employment of such agent shall not excuse the personal attendance of the plaintiff or defendant, in cases where his personal attendance is required by the summons, or any order of the Court ;

Personal attendance when not excused.

and no fee for any agent shall be charged as part of the costs of suit in any case under this Act, unless

Fee for agents not chargeable as costs.

the

the Court certifies that, under the circumstances of the case, such fee is proper to be allowed.

Court may grant time or adjourn hearing.

144. The Court may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit,

and may also, from time to time, in order to the production of further evidence, or for other sufficient reason, to be recorded by the Court, adjourn the hearing of any case to such day as to it may seem fit.

Court may cause local enquiry and report, or may itself enquire.

145. The presiding officer may, at any stage of a case, cause a local enquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government, with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local enquiry in person.

Provisions applied to such enquiry.

The provisions of the law for the time being in force relative to local enquiries by Amíns or Commissioners, under orders of the civil Courts, shall apply to any local enquiry made by any officer under this section,

and, so far as they are applicable, to enquiries made by the presiding officer of the Court in person.

Record in case of enquiry by Court.

In the latter case the presiding officer, after completing the inquiry, shall record such observations as appear to him appropriate, and the observations so recorded shall form part of the proceedings in the suit.

Defendant may pay admitted debt and costs into court.

146. The defendant in any suit under this Act may pay into court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sums shall be paid to the plaintiff.

Plaintiff chargeable with subsequent costs if he proceed and recover no further sum.

If the defendant deposit less than the sum claimed and the plaintiff elect to proceed in the case, and ultimately recover no further sum than has been paid into court, the plaintiff shall be charged with any costs incurred by the defendant in the suit after such payment.

147. No

147. No interest shall be allowed to a plaintiff on any sum paid by the defendant into the court from the date of such payment, whether such sum be in full of the plaintiff's claim, or fall short thereof.

No interest to plaintiff after date of deposit by defendant.

148. When, in any suit between a landholder and a tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed on the ground that some third person has actually and in good faith received and enjoyed such rent before and up to the time when the right to sue accrued, such third person may be made a party to the suit,

In suits where right to receive rent is disputed, third person who has received it may be made a party.

and the question of such receipt and enjoyment of the rent by such third person may be enquired into, and the suit shall be decided according to the result of such enquiry :

Provided that the decision of the Court shall not affect the right of either party entitled to the rent of such land to establish his title by suit in the civil Court, if instituted within one year from the date of the decision.

Saving of right to sue in civil Court to prove title to rent.

149. Whenever a decree is given for the ejectment of a tenant, or the cancelment of his lease, on account of any act or omission by which the land in his occupation has been damaged, or which is inconsistent with the purpose for which the land has been let, the Court may, if it think fit, allow him to repair such damage within one month from the date of the decree, or order him to pay such compensation, within such time, or make such other order in the case, as the Court thinks fit,

Court may allow tenant to repair damage caused by certain acts or omissions.

and if such damage be so repaired, or compensation so paid, or order obeyed, the decree shall not be executed.

150. Every judgment under this chapter shall be pronounced in open Court.

Delivery of judgment.

151. The judgment shall be written in the mother-tongue of the presiding officer, and shall contain the reasons for the same, and shall be dated and signed by the presiding officer at the time it is pronounced :

Its language and contents.

Provided

When it may
be in
English.

Provided that, where his mother-tongue is not English, the judgment may be written in English, if he is able to write a clear and intelligible decision in that language.

To direct
payment of
costs.

151A. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

Power of
Court as to
costs.

151B. Except as hereinbefore provided, the Court shall have full power to give and apportion costs of every suit in any manner it thinks fit; and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power; but if the Court directs that the costs of any suit shall not follow the event, the Court shall state its reasons in writing.

Costs may be
set off.

151C. The Court may direct that the costs payable to one party by another shall be set off against sums admitted or found in the suit to be due from the former to the latter.

Power to give
interest.

151D. Except as hereinbefore provided, the Court may give interest at any rate not exceeding six per cent. per annum, on any sum decreed or found to be due, or on costs.

Power to
hold Court
in any place
within dis-
trict.

152. Every officer invested with powers under this Act may hold a Court for hearing and determining suits under this Act in any place within the limits of the district to which he is appointed.

Every hearing shall be in open Court, and the parties to the suit or their authorized agents shall have due notice to attend in such place.

CHAPTER VII.

PROCEDURE IN EXECUTION OF DECREES IN SUITS.

Mode of exe-
cuting decree
for ejectment
of tenant.

153. If the decree be for the ejectment of any tenant from land occupied by him, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree thereto.

Magistrate to
give it effect
in case of
opposition.

If any opposition is made to the execution of the order for giving such possession or occupancy, by the
party

party against whom the order is made, the Magistrate, on the application of the Collector of the District or Assistant Collector, shall give effect to the same.

154. If the decree be for the payment of arrears of rent or revenue, or of money, and the defendant has been committed to jail, or appear in Court pursuant to the conditions of any security-bond given under section 121, the Collector of the District or Assistant Collector may order that he be detained in, or committed to, the civil jail, unless he immediately pays into court the amount of the decree with costs, or otherwise complies with the terms of the decree.

Power to order detention in, or commitment to, civil jail in certain cases.

155. If the judgment-debtor has given security for his appearance, and is not present when judgment is pronounced, and the surety fails to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

Process against surety on failure to deliver judgment-debtor into custody.

156. (a) A writ of execution may be issued against either the person or the property of a judgment-debtor;

Process of execution against person or property, but not both.

but process shall not be issued simultaneously against both person and property.

(b) Such writ may be issued on the oral application of the judgment-creditor or his agent, made at the time the decree is passed, or, thereafter, upon the written application of the judgment-creditor or his agent.

Applications on which it may issue.

(c) Writ of execution against the person or moveable property of a debtor shall be in the form (H) or (I) contained in the first Schedule hereto annexed, or to the like effect.

Form of writ of execution.

157. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor;

Execution against moveable property.

but, if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects, to the amount of the judgment and costs.

In

In either case, the property to be seized shall be pointed out to the officer entrusted with execution of the process, by the creditor or his agent :

Articles
exempted
from attach-
ment.

Provided that no implements of husbandry, or cattle actually employed in agriculture, or tools of artisans, or necessary wearing apparel of the judgment-debtor, his wife or children, shall be attached under this section.

Date and
duration of
writs.

158. Every writ of execution shall bear date on the day on which it is signed by the Collector of the District or Assistant Collector, and shall continue in force for such period as he may direct (not being more than sixty days), calculated from such date.

159. Second and successive writs of execution may be issued by order of the Collector of the District or Assistant Collector on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

After one
year execu-
tion not to
issue without
notice to
party con-
cerned.

160. Process of execution shall not be issued upon any judgment, without previous notice to the party against whom execution is applied for, if, when application for the issue of the process is made, a period of more than one year has elapsed from the date of the judgment, or from the date of the last previous application for execution.

Execution
not to issue
against heir
or representa-
tive of de-
ceased party
without
notice.

161. Execution on a judgment shall not issue against the heir or other representative of a deceased party, unless notice to appear and be heard has been previously served on such heir or other representative.

No process
of execution
after three
years, unless
judgment be
for sum
exceeding
500 rupees.

162. No process of execution shall be issued on a judgment under this Act, when the application for the issue of such process is made after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees ;

Regulation
of period in
such case.

in which case the period within which execution may be had shall be regulated by the general rules in force

force in respect to the period allowed for the execution of decrees of the civil Court.

163. If a writ issues for taking any person in execution, the officer charged with the execution of the writ shall bring him with all convenient speed before the Collector of the District or Assistant Collector.

Procedure in execution of writ against person.

If such person does not then deposit in court the full amount specified in the writ,

or make such arrangement for the payment of the same as is satisfactory to the judgment-creditor,

or satisfy the Collector of the District or Assistant Collector that he has no present means of paying the same amount,

the Collector of the District or Assistant Collector shall send him to the civil jail, there to remain for such time as may be directed by a warrant addressed to the keeper of the jail, unless in the meanwhile he pays the full amount for the payment of which he is liable under the decree :

Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three months when the amount decreed (exclusive of costs) does not exceed fifty rupees,

Limit of imprisonment.

or six months when such amount does not exceed five hundred rupees

or two years in any other case.

164. (a) Any person once discharged from jail shall not be imprisoned a second time under the same judgment.

No person to be imprisoned a second time under same judgment.

(b) If the amount due under the decree does not exceed one hundred rupees, the Collector of the District or Assistant Collector may declare him absolved from further liability under that decree, and such liability shall thereupon be extinguished.

When further liability extinguished.

(c) In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to him from attachment in execution of the same.

When not extinguished.

165. Every

Diet-money
to be deposit-
ed at time of
issue of
warrant.

165. Every person applying for the issue of a warrant of arrest under section 119, or suing out process of execution against the person of any judgment-debtor, shall deposit in court, when the warrant issues, diet-money for thirty days at such rate not exceeding two annas per diem, as the Collector of the District or Assistant Collector may direct, unless for any special reason he directs that deposit be made at a higher rate, which shall not exceed four annas per diem.

Effect of non-
payment of
diet-money
in advance
during im-
prisonment.

166. Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, on failure of which the party confined shall be discharged.

Diet-money
spent to be
costs in suit.

167. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit,

Refund of
remainder.

and any diet-money not so spent shall be returned to the person who deposited the same.

Procedure in
executing
writ against
moveable
property.

168. In executing a writ of execution against the moveable property of a debtor liable under this Act, the officer charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation, specifying the day upon which the sale is intended to be held, together with a copy of the said list, at the intended place of sale and at the residence of the debtor.

A copy of the said proclamation and list shall be sent to the Collector of the District or Assistant Collector, and shall be affixed in his office.

Time to
elapse before
sale of move-
able pro-
perty.

169. No moveable property taken in execution under this Act shall be sold before the expiration of ten days next after the day on which such property is so taken.

Custody
meanwhile.

Until such sale the property shall be deposited in some fit place, or it may remain in custody of some fit person approved by the officer executing the writ.

Provisions
applied to
sale.

The provisions of sections 74 to 78 (both inclusive),

SO

so far as the same are applicable, shall apply to sales under this section.

170. No irregularity in publishing or conducting a sale of any moveable property under an execution shall vitiate such sale.

Sale not vitiated by irregularity.

But any person injured by such irregularity may recover compensation for such injury by suit in the civil Court :

Right to sue for compensation.

Provided that such suit be brought within one year from the date of sale.

Limitation.

171. In the execution of any decree for the payment of arrears of rent or revenue, or of money, under this Act, if satisfaction of the judgment cannot be obtained by execution against the person or moveable property of the debtor, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor, except the materials of buildings actually occupied by a debtor who is an agriculturist.

In executing decrees for money, when execution may be applied for against immoveable property.

172. If the immoveable property against which execution is applied for be other than a mahál, or share of a mahál, process shall be issued in the same manner as for the attachment and sale of moveable property : and the provisions of sections 168, 169 and 170 shall be applicable.

Process when the immoveable property is not a mahál.

In the event of the sale of such property being completed, possession thereof shall be given to the auction-purchaser by the Collector of the District in which such property is situate.

Possession to be given to auction-purchaser.

173. When such property is a mahál, or a share of a mahál, the decree shall be sent for execution to the Collector of the District in which such property is situate,

Procedure when it is a mahál.

and if the judgment-debtor satisfies the Collector of the District that there is reasonable ground to believe that the amount of the judgment-debt may be raised by mortgage of the property, or by letting it on lease, or by disposing by private sale of a portion of the property or any other property belonging to the judgment-debtor, the Collector of the District may, on

the

the application of the judgment-debtor, postpone the sale for such period as the Collector of the District thinks proper to enable the judgment-debtor to raise the amount,

and if the judgment-debtor satisfies his creditor, the execution shall be stayed, and the Collector of the District shall report the fact to the Court by which the decree was made.

Procedure where judgment-debtor fails to satisfy creditor within further time or Collector thinks sale inexpedient.

174. If the judgment-debtor obtaining a postponement of the sale fails to satisfy his creditor within the period so fixed, or, if the judgment-debtor does not apply for, or applies for but does not obtain, a postponement of the sale, and the Collector of the District considers that the sale of the mahál or share is inexpedient, and that satisfaction of the decree may be made by means of a temporary alienation of the property,

the Collector of the District shall cause an accurate rent-roll of the property to be prepared, and ascertain the annual income derivable therefrom.

Power to transfer property to judgment-creditor.

If, in the opinion of the Collector of the District, such income is sufficient to pay off the judgment-debt with interest at six per cent. per annum, within any period not exceeding fifteen years from the date of the decree, he may transfer the property to the judgment-creditor, or if the judgment-creditor refuse to take it, to some other person, or he may hold it under his own management, for such period not exceeding fifteen years, as may be sufficient for the recovery of the debt with interest as aforesaid, and on such conditions as to the payment of such debt and interest as he deems expedient.

Power to hold property under management.

Orders passed under this section and section 173 shall be subject to revision by the Commissioner of the Division and the Board, but shall not be open to appeal to the civil Court.

Proprietor to be treated as ex-proprietary tenant of sîr-land.

174A. When the property of a judgment-debtor which is transferred or held under management under section 174 includes any sîr-land of such debtor, he shall, until such property is restored to him, be treated

as an ex-proprietary tenant of such sir-land under section 7.

175. If in the opinion of the Collector of the District the recovery of the debt under section 174 is impossible, or if the sale of the property appear to him advisable on other grounds, he shall report, through the Commissioner of the Division, the case for orders to the Board.

Report of
case to
Board.

176. On the receipt of such report, the Board may make, or cause to be made, such further endeavours for the recovery of the debt under the provisions of section 174, as to it may seem practicable.

Procedure
on receipt of
report.

177. If it appear to the Board that the debt cannot be recovered under section 174, or if the sale of the property appear to it advisable on other grounds, it shall order the property to be sold, in which case the sale shall be made under the rules in force for the sale of land for arrears of land-revenue, but without prejudice to the incumbrances (if any) to which such property may be subject.

Power to
order sale of
property.

178. If, before the day fixed for any sale of any property under this Act, a third party appear before the Collector of the District or Assistant Collector, and claim a right or interest to or in any of the property, he shall examine such party or his agent, according to the law for the time being in force relative to the examination of witnesses,

Examination
of third party
claiming
interest in
property.

and, if he see sufficient reason for so doing, may stay the sale of such property.

Stay of sale.

179. The Collector of the District or Assistant Collector may adjudicate upon such claim, and make such order as he thinks fit between the claimant and the plaintiff and defendant in the original suit.

Adjudication
of such
claims.

In trying such claim, the Collector of the District or Assistant Collector shall be guided by the rules contained in this Act, so far as they may be applicable.

Rules ap-
plied.

180. If the claimant fail to establish his right to the property taken in execution, the Collector of the District or Assistant Collector may, at the time

Compensa-
tion award-
able against
claimant

of

failing to
establish
right.

of disposing of the case, order him to pay to the judgment-creditor the costs of the proceedings on the claim, and also such sum as the Collector or Assistant Collector thinks sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

No appeal
from order
under section
179 or 180.

181. (a) No appeal shall lie from any order passed under section 179 or section 180 by the Collector of the District.

Right to sue
in civil Court.

(b) But the party against whom the same is passed may institute a suit in the civil Court to establish his right at any time within one year from the date of the order :

Proviso.

(c) Provided that, if the order be for the sale of the property taken in execution, and the property is moveable, the suit shall not be for the recovery of such property, but shall be for compensation from the judgment-creditor by whom it was brought to sale.

CHAPTER VIII.

APPEAL, RE-HEARING AND REVIEW.

(A.)—*From Decrees in Suits.*

Judgment of
Collector of
District or
Assistant
Collector of
first class
when final.

182. In suits under this Act, tried and decided by a Collector of a District or an Assistant Collector of the first class, his judgment shall be final.

Appeal from
decision of
Assistant
Collector of
second class.

183. All decisions of the Assistant Collector of the second class in suits mentioned in section 93 shall be appealable to the Collector of the District, whose order thereon shall be final.

Time for
presentation.

184. The petition of appeal shall be presented to the Collector of the District within thirty days from the date of the decree.

Procedure on
appeal.

185. The Collector of the District may either dismiss the petition or may fix a day for hearing the appeal, and in that case he shall cause notice of the same

same to be served on the respondent in the manner hereinbefore prescribed for the service of summons.

If, on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant does not appear in person or by an agent, the appeal may be dismissed for default.

If the appellant appears and the respondent does not appear in person or by an agent, the appeal may be heard *ex parte*.

186. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector of the District to re-admit the appeal, Re-admission of appeal.

and if it be proved to the satisfaction of the Collector of the District that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector of the District may re-admit the appeal.

187. After hearing the appeal, the Collector of the District shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits. Judgment in appeal.

188. In suits in which the judgment of the Collector of the District or Assistant Collector is final, as provided in section 182, he may, upon the application of either party, if preferred within thirty days from the date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case, which the applicant had no knowledge of, or could not produce, at the time of trial. Re-hearing of suits not open to appeal.

189. Notwithstanding anything contained in sections 182 and 183 an appeal shall lie to the District Judge from the decision of the Collector of the District or Assistant Collector of the first class, in all suits mentioned in section 93, Appeal to District Judge.

in which the amount or value of the subject-matter exceeds one hundred rupees, or

in which the proprietary title to land has been determined

determined between parties making conflicting claims thereto :

Appeal to High Court.

Provided that, where the amount or value of the subject-matter of the suits exceeds five thousand rupees, the appeal shall lie to the High Court.

Rules as to time of presentation, &c., to apply.

190. The rules for the time being in force in regard to the time within which appeals from the decisions of civil Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the District Judge or High Court under this Act.

Special appeal to High Court from District Judge.

191. The decisions of District Judges passed in regular appeal under this Act shall be open to special appeal to the High Court, in the same manner, and subject to the same rules, as the decisions of District Judges passed in regular appeal are open to special appeal under the Code of Civil Procedure and the Indian Limitation Act, 1877.

(B.)—*From Orders on Applications or relating to the Execution of Decrees.*

(1) *Assistant Collectors of the Second Class.*

Appeal from Assistant Collector of second class.

192. An appeal to the Collector of the District shall lie from all orders passed under this Act by an Assistant Collector of the second class.

(2) *Assistant Collectors of the First Class.*

Appeal from orders of Assistant Collectors of first class on certain applications.

193. An appeal to the Commissioner of the Division shall lie from all orders passed by an Assistant Collector of the first class,

(a) on applications under section 99, where the amount or value of the subject-matter exceeds one hundred rupees,

(b) on applications under section 100.

Appeal from other orders of Assistant Collector of first class.

194. An appeal to the Collector of the District shall lie from all other orders passed under this Act by an Assistant Collector of the first class, except—

(a) orders on applications mentioned in section 98 ;

(b) orders

(b) orders on applications mentioned in section 99;

(c) orders passed in the course of a suit and relating to the trial thereof.

195. The orders of an Assistant Collector of the first class on the following applications shall be final, subject to revision by the Commissioner of the Division or the Board—

Final orders of Assistant Collector of first class.

(a) applications mentioned in section 98;

(b) applications mentioned in section 99, where the amount or value of the subject-matter does not exceed one hundred rupees.

(3) *Collector of the District.*

196. An appeal to the Commissioner of the Division shall lie from orders passed by the Collector of the District,

Appeal from certain orders of Collector of District.

(a) under section 99, when the amount or value of the subject-matter exceeds one hundred rupees,

(b) under section 100.

In all other cases orders under this Act passed by the Collector of the District shall be final, subject to revision by the Commissioner of the Division or the Board.

(4) *Commissioner of the Division.*

197. Save as provided by section 198, the orders of the Commissioner of the Division on appeals shall be final, subject to revision by the Board.

Finality of orders of Commissioner of Division.

198. An appeal from the decisions of the Commissioner of Division, on appeals against orders passed by the Collector of the District or Assistant Collector on the applications mentioned in section 100, shall lie to the Board, except where the Commissioner of the Division dismisses the appeal.

Appeal to Board from his decisions on appeals against orders on applications mentioned in section 100.

In such case the provisions of section 199 shall apply.

199. The Board may at any time call for any case (other than a suit mentioned in section 189)

Power of Board to call for cases and pass orders thereon.

which

which has come before any Commissioner of a Division, or any Court subordinate to him, and pass such orders thereon, consistent with this Act, as the Board thinks fit.

Time for
appealing.

200. No appeal shall be brought to the Collector of the District after the expiration of thirty days, or to the Commissioner of the Division after the expiration of sixty days, or to the Board of Revenue after ninety days, from the date of the order complained of.

Admission of
appeals after
prescribed
period.

201. Any appeal under this Act may be admitted after the period of limitation prescribed therefor when the appellant satisfies the officer to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

No appeal shall lie against an order under this section admitting an appeal.

(5) Review.

Power of
Board to
review its
orders.

201A. The Board may review and may rescind, alter or confirm any order made by itself, or by a single member, on the application of one of the parties to the case, if preferred within ninety days from the passing of the order.

Reviewing of
applications
not open to
appeal.

201B. In the case of any application in which the order of the Commissioner, Collector of the District or Assistant Collector is final, as provided in sections 195, 196 and 197, such Commissioner, Collector or Assistant Collector, as the case may be, may, upon the petition of either party, if presented within thirty days from the date of the decision, review his order upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of or could not produce at the time of trial.

CHAPTER IX.

MISCELLANEOUS.

Time to be
excluded in
computing
limitation
period.

202. In computing the period of limitation prescribed for any suit under this Act, the day on which the right to sue accrued shall be excluded.

In

In computing the period of limitation prescribed for any appeal under this Act, the day on which the judgment or order complained of was pronounced, and the time requisite for obtaining a copy of the decree or order appealed against, shall be excluded.

203. Whenever a Court is closed on the last day of any period provided in this Act for the presentation of any memorandum of appeal, or for the deposit or payment of any money in or into court, the day on which the Court re-opens shall be deemed to be such last day.

Rule as to last day for presentation or deposit, when Court is closed on such day.

204. (a) If in any suit instituted, or on any application made, under this Act, it appears to the presiding officer that any question in issue involving a point of law is more proper for the decision of a civil Court, such officer, if a Collector of a District, or the Collector of the District on the representation of such officer, may cause a case to be stated for the opinion of the District Judge, who shall hear the case in such manner as nearly as may be as is prescribed for the hearing of cases by the High Court by section 619 of the Code of Civil Procedure.

Power to state case involving point of law for opinion of District Judge.

(b) If the District Judge finds that the case is insufficiently stated, he may return it to the Collector of the District for amendment.

(c) Subject to any limits of value or time provided by law for cases falling under the Code of Civil Procedure, an appeal shall lie from the judgment of the District Judge to the High Court.

(d) The District Judge shall return the case with the opinion of the civil Court to the Collector of the District, and the revenue Courts shall decide the suit or application in accordance with such opinion.

(e) The costs attending such case shall be dealt with as costs in the suit or on the application in the revenue Court.

205. (a) If in any suit instituted, or on any appeal presented, in a civil or revenue Court, the Judge or presiding officer doubts whether he is precluded by

Power to refer to High Court question as to jurisdiction.

this

this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

(b) On any such reference being made, the High Court may order the Judge or presiding officer, either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

(c) The order of the High Court on any such reference shall be final, and shall not be questioned by the same parties in the same suit.

Procedure where objection that suit was instituted in wrong Court was not taken in Court of first instance.

206. In all suits instituted in any civil or revenue Court, in which an appeal lies to the District Judge or High Court, an objection that the suit was instituted in the wrong Court shall not be entertained by the appellate Court, unless such objection was taken in the Court of first instance; but the appellate Court shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where such objection was taken in Court of first instance.

207. If in any such suit such objection was taken in the Court of first instance, but the appellate Court has before it all the materials necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right Court.

Procedure where, in such cases, the appellate Court has not materials for determining the suit.

208. If in any such suit the appellate Court has not before it the materials necessary for the determination of the suit, it shall proceed under the provisions of the Code of Civil Procedure relating to appeals; but if it remands the suit, or frames and refers issues for trial, or requires additional evidence to be taken by the Court of first instance, it may direct its order either to the Court in which the suit was instituted, or to any other Court competent to entertain the suit,

and the objection that the order of a subordinate appellate Court has been directed to a Court which was not competent to entertain the suit shall not be taken on special appeal.

Power to refer party to civil Court.

208A. If, in any suit or application pending before a Revenue Court exercising original, appellate or revisional jurisdiction under this Act, it appears to

such

such Court that any question in issue is more proper for decision by a civil Court, such revenue Court may, by order in writing, require any party to such suit or application to institute, within such time as it may appoint in this behalf, a suit in the civil Court with a view to obtaining a decision of such question; and, if he fails to comply with such requisition, shall decide such question against him.

If he institutes such suit, the Revenue Court shall dispose of the suit or application pending before it in accordance with the final decision of the civil Court of first instance or appeal (as the case may be) upon such question.

209. In any suit brought by a co-sharer against a lambardár for a share of the profits, the Court may award to the plaintiff not only a share of the profits actually collected, but also a sum equal to the plaintiff's share in the profits which, through gross negligence or misconduct, the lambardár has omitted to collect.

Suits by co-sharer against lambardár for share of profits.

210. In any application made by a tenant against a landholder to recover possession of a holding, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the landholder.

Tenant's power to implead persons claiming through landholder.

In any suit instituted, or application made, by a landholder to eject a tenant, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the tenant.

Landholder's power to implead persons claiming through tenant.

211. The Local Government may from time to time make rules consistent with this Act—

Power of Local Government to make rules.

(a) for the guidance of officers in determining, under sections 13, 14, 15, 17, 18 and 20, the rent payable by tenants,

(b) for the guidance of officers assessing rent under section 30,

(c) as to the dates on which instalments of rent shall fall due,

(d) as to the procedure to be followed on all applications under section 95.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Power of Board to make rules.

The Board, with the previous sanction of the Local Government, may from time to time make rules, consistent with the provisions herein contained, for the guidance of all persons in matters connected with the enforcement of this Act.

Instalments when to be deemed in arrear.

212. When the Local Government has made a rule fixing the date on which any instalment of rent shall fall due, no such instalment shall, for the purposes of this Act, be deemed to be in arrear unless it remains unpaid after the date fixed by such rule.

THE FIRST SCHEDULE.

FORM A. (*See section 51.*)

I, *A. B.*, of _____, solemnly declare that I did personally [*or by my agent C. D.*], on the _____ day of _____, tender payment to *E. F.* of the sum of Rs. _____ as and for the whole amount due from me on account of rent from the month of _____ to the month of _____ both inclusive. I further declare that the said *E. F.* refused to accept the sum so tendered, and to give a receipt in full for the same, and I declare that, to the best of my belief, the sum of rupees _____ so tendered, and which I now desire to pay into court, is the full amount I owe the said *E. F.*, and I hereby apply for leave to pay the same accordingly.

FORM B. (*See section 52.*)

Court of the Collector of _____, dated the _____ day of _____

To *E. F.*, &c.

WITH reference to the written declaration of *A. B.*, you are hereby informed that the sum of rupees _____ therein mentioned is now in deposit in this Court, and that the above sum will be paid to you, or to your duly authorized agent, on application.

[This is to be written on a copy of the declaration in Form A made by the person paying the money into court.]

FORM C.

Rent (N. W. Provinces).

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

A. B., Distrainer.

WHEREAS the said *A. B.* has applied to have the distrained property specified below sold for the recovery of
alleged to be due to him as arrears of rent, you are hereby required, either to pay the said sum to the said *A. B.*, or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this day of 188 .

FORM OF SUMMONS TO DEFENDANT.

A. B., Plaintiff.

C. D., Defendant.

[Name, description and address of Defendant.]

FORM E.

FORM E. (*See section 119.*)

FORM OF WARRANT OF ARREST.

No. (*of suit*) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of 188 .

FORM F. (*See section 119.*)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[*Name, description and address of plaintiff.*]

C. D., Defendant.

[*Name, description and address of defendant.*]

WHEREAS the said *A. B.* has brought a claim against you in this Court for (*here specify particulars of claim as given in the plaint*) and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

FORM G. (*See section 121.*)

FORM OF SECURITY-BOND FOR APPEARANCE OF DEFENDANT.

WHEREAS *A. B.*, plaintiff, has instituted a suit in the Court of the Collector of against *C. D.*, defendant, and the said *C. D.* has been required to give security for his appearance at any time when called on while the suit is pending and until execution of the decree, I., *E. F.*, hereby declare myself surety for the said *C. D.*'s appearance as aforesaid, and in case of his making default in such appearance, I engage to pay any sum for the payment of which the said *C. D.* may be liable under the decree. *If the suit be for the delivery of papers or accounts, specify some sum to be fixed by the Collector.*

FORM H.

1881.]

Kent (N. W. Provinces).

FORM H. (*See section 156.*)

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.

C. D., Defendant..

To the Názir of the Court of the Collector of

WHEREAS the said *C. D.* was directed by a decree of this Court, under date the day of 188 , to pay to *A. B.* the sum of and for costs of suit, amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to apprehend the said *C. D.*, and to bring him with all convenient speed before this Court to be dealt with according to law.

FORM I. (*See section 156.*)

WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS *C. D.* was directed by a decree of this Court, under date the day of 188 , to pay to *A. B.* the sum of and for costs of suit, amounting to , and whereas the said *C. D.* has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of for costs of executing this process, by seizure and sale of such moveable property of the said *C. D.* as (is described in the list annexed and) [*if no list is furnished, these words to be omitted*] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said *C. D.*, on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

THE SECOND SCHEDULE.

(*See section 1.*)

TERRITORIES EXEMPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

I. The province of Kumáon and Garhwál.

II. The

Rent (N. W. Provinces). [ACT XII, 1881.]

- II. The Tarai Parganas, comprising—Bázpúr, Káshípúr, Jaspúr, Rudarpúr, Gadarpúr, Kílúpúr, Nának-Mattha, and Bilheri.
- III. The portion of the Mirzápúr District lying to the south of the Kaimor Range.
- IV. The Family Domains of the Mahárájá of Benares comprising the following parganas :—
Bhadoli and Kera Mangror in the Mirzápúr District.
Kaswár Rájá in the Benares District.
- V. The tract of country known as Jaunsar Báwar in the Dehra Dún District.

ACT No. XIII OF 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 11th March, 1881.)

An Act to provide for the better government of Fort William.

WHEREAS it is expedient to give power to make rules for the better government of Fort William in Bengal, and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules; It is hereby enacted as follows :—

Preamble.

1. This Act may be called “The Fort William Act, 1881;”

Short title.

and it shall come into force on the first day of April, 1881.

Commence ment

But nothing herein contained shall be deemed to confer jurisdiction over any persons (other than artificers, labourers, sutlers and followers) to whom the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, 1869, is or are applicable.

2. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, define, for the purposes of this Act, the limits of Fort William in Bengal; and in this Act the expression “the Fort” means the area so defined.

The Fort.”

3. The Commander-in-Chief in India may, from time to time, with the sanction of the Governor General in Council, make rules, to be in force within the Fort, in regard to the matters specified in the schedule hereto annexed, and other matters of a like nature, and may by such rules prescribe, as penalties for

Commander-in-Chief may make rules

for the infringement thereof, fine which may extend to fifty rupees, or imprisonment for a term which may extend to four days, or both.

When a sentence of fine is passed under any such rule, the term for which the Court directs the offender to be imprisoned in default of payment of such fine may extend to, and shall not exceed, four days.

When any rule is made under this section, a copy thereof, in English and such other languages as the Governor General in Council may from time to time direct, shall be exhibited in such conspicuous places within the Fort as the officer commanding the Fort may from time to time direct.

Governor General in Council may invest officer with power to try breaches of rules.

4. The Governor General in Council may invest any commissioned officer in Her Majesty's Army with power to try persons charged with any infringement of the rules made under section three.

The officer so invested is hereinafter called the Fort Magistrate.

Procedure to be followed

5. In all cases under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and, as nearly as may be, follow the procedure, conferred on, and prescribed for, a Presidency Magistrate by the Presidency Magistrates Act, 1877; and, subject to the power conferred by the High Courts Criminal Procedure Act, 1875, section 117, every finding, sentence or order of such Magistrate under this Act shall be final.

Power to arrest without warrant.

6. Any Police-officer, or any other person empowered in this behalf by the Governor General in Council, by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act.

Power to Police-officer to release on bail.

Every person so arrested shall be taken to the Police-station within the Fort, and shall be detained there until he gives to the Police-officer in charge of such station a bond, with or without sureties, as such officer may require, for a sum not exceeding one hundred rupees, to appear before the Fort Magistrate

at

at a time to be specified in such bond, or until he can be brought before such Magistrate.

7. Nothing in this Act or in any rule made hereunder shall affect the jurisdiction of the Magistrates appointed under the Presidency Magistrates Act, 1877, or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act: Provided that no person shall be punished twice for the same offence.

Jurisdiction of Presidency Magistrates and prosecutions under other laws saved.

8. No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed.

Limitation of time for prosecutions under Act.

9. All penalties heretofore imposed by the Garrison Quarter Master of the Fort for offences against garrison rules and regulations shall be deemed to have been imposed in accordance with law.

Validation of penalties heretofore imposed by Garrison Quarter Master.

THE SCHEDULE.

(See section 3.)

- (1). Throwing dirt or rubbish of any description into the drains or roads or anywhere but in the appointed places.
- (2). Removing night-soil without a covering or at unauthorized hours.
- (3). Camp-followers, servants and others not keeping the godowns they live in clean.
- (4). Performing offices of nature in other than the appointed places.
- (5). Bathing, or washing clothes or animals, in the *cunette* or other unauthorized places.
- (6). Selling unwholesome articles of food, grain or drinks.
- (7). Adulterating food or drinks.
- (8). Making evacuations in unauthorized places.
- (9). Rash or negligent driving.
- (10). Picketting, training or breaking in animals.
- (11). Causing obstruction by vehicles on the road.
- (12). Exposing or hawking articles for sale about the roads and barracks, or within the Fort, without a Fort pass.
- (13). Beating drums or tom-toms.
- (14). Damaging lamps, posts, masonry or other Government-property in any part of the Fort.
- (15). Disorderly behaviour in the public thoroughfares.
- (16). Gambling.

(17) Spitting

(17). Spitting pán on any of the public staircases, gateways, walls and verandahs, or defacing in any way the walls of barracks, buildings or gateways.

(18). Throwing slops into the drains.

(19). Washing cooking-pots at the water-taps and wasting water.

(20). Cooking in unauthorized places.

(21). Hanging clothes to dry on the guns or masonry-work.

(22). Laying out clothes, accoutrements or stable-bedding after the authorized hours.

(23). Destroying the trees, bushes or plants, or climbing trees.

(24). Servants smoking hookahs in their masters' quarters or cook-houses, or keeping such quarters or cook-houses in an unsanitary state.

(25). Trespassing on parade-grounds, or making footpaths across the grass-plots.

(26). Being drunk and incapable.

(27). Fighting, quarrelling and creating a disturbance, or making unnecessary noise of any kind.

(28). Affixing bills and papers on any walls in the Fort.

(29). Cutting grass or interfering with the grass-contractor.

(30). Declining to show a tin pass when called upon to do so.

(31). Being found in the garrison without a tin pass, or being in possession of a ticket belonging to another.

(32). Driving vehicles without lights or with insufficiently greased wheels.

(33). Swinging or sitting on the chain-fences.

(34). Interfering in any way with the guns, carriages or piles of shot and shell on the works, or with the packed ordnance.

(35). Mounting the ramparts or parapets or entering the embrasures without authority.

(36). Smuggling liquor into the Fort.

(37). Burning stable-litter or lighting fires except in authorized places and at authorized hours.

(38). Carrying lights except in closed lanterns, or letting off fireworks.

(39). Removing property of any kind or description from the Fort without written authority.

(40). Allowing animals of any sort to stray into the Fort, or to graze within the same.

(41). Slaughtering animals or exposing carcasses or offal within the Fort.

(42). Keeping dogs or poultry in unauthorized places.

(43). Buying, selling or receiving any portion of a soldier's kit.

(44). Disobedience of lawful authority in failing to attend to authorized instructions of the police or of the several sentries posted throughout the Fort.

(45). Occupying buildings of any kind without proper allotment.

ACT No. XIV OF 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 11th March, 1881.)

An Act to amend Bengal Regulation VII of 1828.

WHEREAS it is expedient to amend Bengal Regulation VII of 1828 (*for amending the Provisions of Regulation XV of 1795, and for defining the Authority of the Rajah of Benares in the Maháls therein referred to*) in manner hereinafter appearing ; It is hereby enacted as follows :—

Preamble.

1. This Act may be called “The Benares Family Domains Act, 1881” :

Short title.

And it shall come into force on such day as the Lieutenant-Governor of the North-Western Provinces may, by notification in the official Gazette, appoint in this behalf.

Commencement of Act.

2. The following portions of Bengal Regulation VII of 1828 shall be repealed, namely :—

Repeal of certain portions of Bengal Regulation VII of 1828.

(a) in section 5, the words and figures “under the rules contained in Regulation XLI, 1795”;

(b) in section 14, the words “under the Regulations,” in both places in which they occur;

(c) in section 19, the words “before the Court of circuit”;

(d) in section 20, the proviso.

3. In the same Regulation, for section 3, the following shall be substituted, namely :—

New section substituted for section 3 of same Regulation

“3. The superintendence of the said maháls shall be
Superintendence of
be

[Price two annas.]

maháls vested in Commissioner.

be vested in the Commissioner of the Benares Division, hereinafter called 'the Superintendent.'

"The Lieutenant-Governor of the North-Western Provinces may, from time to time, appoint a Deputy Superintendent of the said maháls, and confer upon him all or any of the powers of the Superintendent, to be exercised by him subject to the general control of the Superintendent."

Amendment of same Regulation, section 7.

4. In the same Regulation, section 7, for the last twenty-two words, the following shall be substituted, namely :—

"The orders thus passed by the Superintendent shall be subject to appeal to, and revision by, the Board of Revenue, whose order thereon shall be final, unless altered or set aside by the said Lieutenant-Governor."

Amendment of same Regulation, section 9.

5. In the same Regulation, section 9, for the words "The Regulations at present in force within the Province of Benares" the words "The enactments for the time being in force in the North-Western Provinces" shall be substituted, and after the word "applicable" the words "and the Local Government, with the concurrence of the Maharájá, may direct" shall be inserted.

Clause added to section 10 of same Regulation.

6. To section 10 of the same Regulation the following clause shall be added, namely :—

"The Maharájá may delegate to one or more of his officers the exercise of all or any of the powers vested in him under this section in the whole or any part of the said maháls."

Amendment of same Regulation, section 11.

7. In the same Regulation, section 11, for the words and figures "Regulation XI. 1822," the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted.

Amendment of same Regulation, section 12.

8. In the same Regulation, section 12, for the words "Boards of Revenue" the words "Commissioners of Divisions and the Board of Revenue" shall be substituted;

and

and, for the words "towards the Board" the words "towards the Commissioner" shall be substituted.

9. In the same Regulation, section 13, for the words "Governor General in Council" the words "Board of Revenue" shall be substituted.

Amendment of same. Regulation, section 13.

10. In the same Regulation, section 16, for the words "a Native Commissioner shall be maintained by the Rajah in each of the pergunnahs referred to in Regulation XV. 1795," the following shall be substituted, namely:—"a Native Commissioner, or two or three Native Commissioners, as the said Lieutenant-Governor may, from time to time, direct, shall be maintained by the Mahārājā."

Amendment of, and addition to, same Regulation, section 16.

And to the same section the following shall be added, namely:—

"The local limits of the jurisdiction of the Native Commissioners shall be determined by the Mahārājā, and may be altered by him from time to time."

11. In the same Regulation, section 21, for the words and figures "contained in Regulation XXIII. 1814" to the end of the section, the following shall be substituted, namely:—"prescribed by the said Lieutenant-Governor under section 22 of this Regulation."

Amendment of same Regulation, section 21.

12. For sections 22 to 26, both inclusive, of the same Regulation, the following sections shall be substituted, that is to say:—

Sections substituted for sections 22 to 26 of same Regulation.

"22. The said Lieutenant-Governor may, from time to time, make rules consistent with this Regulation—

Power to make rules.

"(a) to regulate the procedure and powers of the Native Commissioners, and to determine the cases in which, the mode in which, and the authority to or by which, the orders and decisions of such Commissioners shall be subject to appeal or revision, and

"(b) to regulate, in matters not hereinbefore provided for, the administration of the Family Domains in so far as it is entrusted to the Mahārājā;

"such

“ such rules shall, when published in the local Gazette, have the force of law :

“ Provided that no such rule shall be so published until the opinion of the Mahārājā thereon has been taken and considered by the Lieutenant-Governor.

“ In matters not otherwise provided for by the rules made under clause (a), the Code of Civil Procedure shall apply.

Procedure in case of doubt as to Judge's jurisdiction.

“ 23. If, in any suit instituted or appeal presented under this Regulation in any Court, the Judge or presiding officer doubts whether he has jurisdiction, he may refer the matter to the Board of Revenue ; and, on any such reference being made, the said Board may order the Judge or presiding officer either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

“ The order of the said Board on any such reference shall be final.

Operation of general Acts.

“ 24. Except as provided by or under this Regulation, or any other enactment for the time being in force,

“ (a) the administration of the Family Domains, in so far as it is entrusted to the Mahārājā, shall be regulated by the principles and spirit of the enactments for the time being in force in the North-Western Provinces, and

“ (b) the administration of the said Domains, in so far as it has not been so entrusted, shall be regulated by those enactments.

Interpretation-clause.

“ 25. In this Regulation, unless there is something repugnant in the subject or context,—

‘ Board of Revenue ’

“ ‘ Board of Revenue ’ means the Board of Revenue of the North-Western Provinces, or such officer or officers as may hereafter be lawfully appointed to exercise, within the Province of Benares, the powers of such Board :

“ ‘ Regulations ’

“ ‘ Regulations ’ includes Acts for the time being in force in the North-Western Provinces.” ‘ Regulations.’

13. All orders heretofore passed by the Governor General in Council, or the Lieutenant-Governor of the North-Western Provinces, or any other authority, regarding revisions of settlement or other matters connected with the revenue-administration of the tracts of territory mentioned in the preamble to Bengal Regulation VII of 1828, shall be deemed to have been passed in accordance with law; and no order or decision purporting to have been passed by any civil or revenue authority under the provisions of that Regulation shall be called in question in any Court. Validation of past orders, &c.

14. In the Scheduled Districts Act, 1874, first schedule, Part IV, and in the Laws Local Extent Act, 1874, sixth schedule, Part IV, the following shall be repealed, that is to say :— Parts of Acts XIV and XV of 1874 repealed.

“ V. The Family Domains of the Mahārājā of Benares comprising the following parganas :—

“ Bhadohi and Kheyra Mángro in the Mirzapur District.

“ Kaswá Rájá in the Benares District.”

15. In the Laws Local Extent Act, 1874, section 8, after clause (j), the following shall be inserted, namely :— Clause added to Act XV of 1874, s. 8.

“ (jj) extend to Pargana Bhadohi or Pargana Kera Mángro in the Mirzapur District, or to Pargana Kaswár Rájá in the Benares District, any law not now in force therein.”

THE INDIAN FACTORIES ACT, 1831.

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[Price three annas.]

ACT No. XV OF 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 15th March, 1881.)

An Act to regulate labour in Factories.

WHEREAS it is expedient to regulate labour in factories ; It is hereby enacted as follows :— Preamble.

Preliminary.

1. This Act may be called “ The Indian Factories Act, 1881.” Short title.

It applies to the whole of British India, (and shall come into force on the first day of July, 1881.) Local extent
Commence-
ment.

2. In this Act, unless there is something repugnant in the subject or context,— Interpret-
ation-clause.

“ factory ” means any premises (other than indigo-factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale, any article or part of an article ; and ‘ factory :’

(a) wherein steam, water or other mechanical power is used in aid of any such process ; and

(b) wherein not less than one hundred persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process ; and

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling :

“ child ”

"child."

"child" means a person under the age of twelve years :

"mill-gearing."

"mill-gearing" includes every shaft, whether upright, oblique or horizontal, and every wheel, drum, pulley, rope, driving strap or band, by which the motion of the first moving power is communicated to any machine :

"employed."

a child who works in a factory, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein within the meaning of this Act.

Inspectors and certifying Surgeons.

Inspectors.

3. The Local Government may in its discretion, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any person so appointed.

In default of such appointment, the Magistrate of the district shall, in virtue of his office, be Inspector of all factories (if any) in the District.

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code; and shall be officially subordinate to such authority as the Local Government may, from time to time, indicate in this behalf.

Powers of Inspector.

4. An Inspector of factories may, within the local limits for which he is appointed,

(a) enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein ;

(b) make

(b) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the provisions of this Act ;

(c) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act—

until the age of such person has been certified, in the manner hereinafter provided, to be above seven years ; or,

for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above twelve . years.

5. The civil surgeon or such other person practising medicine or surgery as the Local Government may, from time to time, appoint in this behalf for any local area (hereinafter called the certifying surgeon) shall, at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, examine such person and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below seven years, or twelve years, as the case may be.

Certifying
surgeons.

Children.

6. No child shall be employed in any factory, if he is under the age of seven years.

Age of em-
ployment.

7. No child shall be actually employed in any factory more than nine hours in any one day.

Hours of em-
ployment for
children.

And no child shall be employed in any factory on any day without an interval, or intervals, amounting in the whole to at least an hour, being allowed to him for food and rest.

The times at which such intervals shall be allowed, and the length of each interval, shall be fixed by the Local Government for each factory, after ascertaining,

as

as far as possible, the existing practice in such factory and the wishes of the occupier thereof.

The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice in English and the languages of the District in which the factory is situate, showing the times at which such intervals shall be allowed and the length of each interval.

A child shall not be deemed to be employed within the meaning of the first clause of this section during any interval allowed for food or rest.

Child to be allowed holidays.

8. Every occupier of a factory in which children are employed shall, before the beginning of each month, fix not less than four days in such month on which no child shall be employed in such factory, and shall forthwith give notice of the days so fixed to such officer as the Local Government may, from time to time, appoint in this behalf.

An occupier of a factory may, with the previous sanction of the Inspector, substitute, for any day fixed under this section, another day in the same month.

No child shall be employed in such factory on a day fixed under this section, unless when another day has been substituted for such day as hereinbefore provided, in which event no child shall be employed in such factory on the day so substituted.

Not to be employed in two factories on same day.

9. No occupier of a factory shall employ therein on any day any child who has to his knowledge already been employed on the same day in any other factory.

Not to be engaged in certain dangerous work.

10. No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel or other mechanical power, as the case may be.

Register of children in a factory.

11. The Local Government may direct any occupier of a factory to keep, in such form and with such particulars as such Government may, from time to time,

time, prescribe, registers of the children (if any) employed in such factory, and of their respective employments.

Fencing.

12. (a) Every fly-wheel directly connected with a steam-engine, or water-wheel or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel, Fencing.

(b) every hoist or teagle near which any person is liable to pass or be employed, and

(c) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced,

shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (c) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.

Notices.

13. When any accident occurs in a factory causing death or bodily injury whereby the person injured is prevented from returning to his work in the factory during forty-eight hours after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of such accident to such authorities in such form and within such time as the Local Government may, from time to time, by rule, direct. Notice to be given of accidents.

14. Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory, the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of Person beginning to occupy factory to give notice

the

the person (if any) under whom the business of the factory is to be carried on.

Penalties.

Penalties

15. Any person who, in breach of this Act, or of any order or rule made hereunder,—

(a) employs any child in any factory ;

(b) neglects to set up or maintain the notice required by section seven, or to fix the days referred to in section eight ;

(c) allows any child to perform the work forbidden by, or to work in contravention of, section ten ;

(d) neglects to keep a register in manner prescribed under section eleven ;

(e) neglects to fence any machinery or mill-gearing in any factory ; or

(f) neglects to give any notice,

shall be punished with fine which may extend to two hundred rupees :

Provided that—

1st, no prosecution under this section shall be instituted except by, or with the previous sanction of, the local Inspector ; and

Only one penalty for same kind of offence on one day.

2nd, no person shall be liable under this section to more than one penalty for any one description of offence committed on the same day, except where two or more children are employed contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each child so employed.

Burden of proof as to age.

16. Where an act or omission would, if a person were under seven or twelve years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

Certifying surgeon's declaration in writing.

A declaration in writing by a certifying surgeon that he has personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes

purposes of this Act, be admissible as evidence of the age of that person.

17. Every occupier of a factory shall be deemed primarily liable for any breach therein of the provisions of this Act; but he may discharge himself from such liability by proof to the satisfaction of the local Inspector, before prosecution therefor, that such breach was committed by some other person without his knowledge or consent; and the person committing such breach shall be liable therefor.

Occupier primarily liable for breach of Act.

Miscellaneous.

18. The Local Government may, from time to time, make rules consistent with this Act to provide for—

Power to make rules.

(a) the fencing of machinery and mill-gearing in factories.

(b) the inspection of factories;

(c) the manner in which appeals under this Act shall be presented and heard; and

(d) otherwise carrying out the provisions of this Act.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

19. This Act shall apply to factories belonging to the Crown: provided that, in case of any public emergency, the Governor General in Council or the Local Government may, by an order in writing, exempt any such factory from this Act to such extent and during such period as the Governor General in Council or the Local Government, as the case may be, thinks fit.

Crown factories.

ACT No. XVI OF 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 15th March, 1881.)

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions; It is hereby enacted as follows:—

1. This Act may be called “The Obstructions in Fairways Act, 1881;” and it shall come into force at once.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing-stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,

(a) cause such thing or any part thereof to be removed; or

(b) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

3. Whenever anything is removed under section two,

[Price one anna and nine pies.]

entitled to expenses incurred in removing obstruction.

two, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Dispute concerning such expenses.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the Magistrate of the District or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Notice of removal to be given by Local Government.

4. The Local Government shall, whenever anything is removed under section two, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Things removed may, in certain cases, be sold

5. If after publishing such notification, such thing is unclaimed, or

if the person claiming the same fails to pay the amount due for the said expenses and any customs duties or other charges properly incurred by the Local Government in respect thereof,

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

Proceeds how applied.

6. On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes the claim within one year from the date of the sale.

"Vessel" to include

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing

or

or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel; and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

tackle, cargo, &c.

8. The Governor General in Council may from time to time, by notification in the *Gazette of India*, make rules to regulate or prohibit in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or throwing of ballast, rubbish, or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

Power to make rules to regulate and prohibit the placing of obstructions in fairways.

9. Whoever is guilty of any act or omission in contravention of the rules made under section eight, may be tried for such offence in any district or Presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for breach of such rules.

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section two, or its creation is regulated or prohibited under section eight, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Compensation payable in certain cases for damage caused under this Act.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the Presidency-town or district

district in which the port to which such fairway leads is situate.

Certain
action of the
Government
previous to
to passing
of this Act to
be deemed to
have been
taken here-
under.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

Saving of
other powers
possessed by
Government.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

ACT No. XVII OF 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 25th May, 1881.)

An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding their respective systems of moneys, weights and measures.

WHEREAS by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it was provided that the High Contracting Parties should use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions: Preamble

And whereas by the same article it was further provided that the detailed measures to be adopted should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed within two years from the date when the said Treaty came into force:

And whereas the said Treaty came into force on the fifteenth day of January, 1880:

And whereas, in pursuance of the said recited article, the Convention set forth in the schedule hereto annexed has been made:

It

It is hereby enacted as follows:—

Short title

1. This Act may be called “The Portuguese Convention Act, 1881.”

Local extent

It extends to the whole of British India.

Commence-
ment and
continuance.

It shall come into force at once, and shall remain in force until the expiration of one year from the date of any notice which may be given under the fourteenth clause of the said Convention.

Provisions
of Conven-
tion
enacted.

2. The provisions of the said Convention, so far as they are binding upon the Government of British India, shall be deemed to have the force of law.

Act XXIII
of 1870 to
apply to
coin and
bullion made
and brought
for coinage
to mint
under
Convention.

3. The provisions of the Indian Coinage Act, 1870, or any other law for the time being in force relating to coinage and the mint, shall, so far as they are consistent with the said Convention, apply to all coin made, and bullion brought for coinage to the mint, under the said Convention, as if such coin and bullion were respectively made and brought for coinage to the mint under the said Act.

THE SCHEDULE.

WHEREAS, by the fifth article of a Treaty of Commerce and Extradition executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between His Most Faithful Majesty the King of Portugal and the Algarves and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, it is provided that the High Contracting Parties shall use their best endeavours to establish between their respective systems of moneys, weights and measures the harmony desirable for the development of commercial relations between their respective dominions; and whereas by the same article it is further provided that the detailed measures to be adopted shall form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed within two years from the date when the said Treaty comes into force; and whereas the said Treaty came into force on the fifteenth day of January, 1880:

In

• In pursuance of the said article, the following Convention has been made :—

1. The Governor General of Portuguese India shall adopt, in the Portuguese possessions in India, the monetary system of British India, for the time being in force, provided that the coins shall have on one side the effigy of the King of Portugal, with the legend *Ludovicus I, Portugaliæ et Algarbiorum Rex*, around it, or such other effigy and legend as the said Governor General may from time to time desire, and on the other side the value of each coin, the year of the Christian era, and the words *India Portugueza*.

2. Subject to the provisions of clause 7, so long as this Convention remains in force, the following coins and no others shall be struck for Portuguese India :—

Silver.—Rupee, weighing 180 grains troy ;

Half-rupee, weighing 90 grains troy ;

Quarter-rupee, weighing 45 grains troy ;

Eighth of a rupee, weighing $22\frac{1}{2}$ grains troy.

The standard fineness of the said silver coins shall be eleven-twelfths of fine silver and one-twelfth of alloy, subject to a remedy not exceeding the following :—

	Remedy in weight.	Remedy in fineness.
Rupee . . .	} Five thousandths	Two thousandths.
Half-rupee . .		
Quarter-rupee .	Seven thousandths	Three thousandths.
Eighth of a rupee	Ten thousandths	

Copper.—Half *tanga*, weighing 200 grains troy, and corresponding with the double pice or half-anna of British India ;

Quarter *tanga*, weighing 100 grains troy, and corresponding with the pice of British India ;

Eighth

Eighth of a *tanga*, weighing 50 grains troy, and corresponding with the half-pice of British India ;

Real, or twelfth of a *tanga*, corresponding with the pic of British India ;

In the making of copper coins, a remedy shall be allowed not exceeding one-fortieth in weight.

The value in copper of one Portuguese rupee will be sixteen Portuguese *tangas*, sixty-four quarter *tangas* or pices, or one hundred and ninety-two *reales* or pies.

3. The Portuguese silver and copper coins established by this Convention shall be issued by the authority of the Government of Portuguese India, and shall be coined on behalf of the said Government by the Government of British India, and by no other agency whatever.

The Governor General of Portuguese India engages that, while this Convention continues in force, no coins other than those established by this Convention shall be coined in or imported into Portuguese India.

4. With the view of obtaining in the shortest possible time the desired uniformity of coinage throughout the respective Indian possessions of the High Contracting Parties, the Governor General of British India engages that the Government of British India shall—

(a) forego, for the period of three years from the date on which this Convention comes into force, all duty or other charge for melting, cutting, refining or recoinage any coin of the existing Portuguese Indian silver currency tendered for re-coinage into Portuguese Indian coin ;

(b) deliver, for the period of five years from the date of this Convention, copper coins of the Portuguese copper currency established by this Convention in exchange for copper coins of the existing Portuguese Indian copper currency which may be brought to the

said

- said mint for the purpose of such exchange, at the value represented by such last-mentioned coins in the existing Portuguese currency. The relative representative value of the old and new coin to be thus exchanged on equal terms, and without charge for manufacture, shall, if the Governor General of Portuguese India so desires, be determined, once for all, by a mixed commission appointed in the manner provided in the sixteenth article of the above-cited Treaty ;

(c) advance to the Governor General of Portuguese India, in the Portuguese currency established by this Convention, such sums in such denominations of coin, and in such instalments (if any), as the said Governor General of Portuguese India may require : provided—

1stly.—That the amount of such advances outstanding at any time shall not exceed in the whole ten lakhs of rupees.

2ndly.—That an interval of two months shall be allowed for compliance with any such requisition, and that no such advance shall be made after the expiration of eighteen months from the date on which this Convention comes into force.

3rdly.—That every such advance shall be, within two months, repaid in coin of the existing Portuguese Indian currency, equivalent thereto in intrinsic value ascertained upon assay at Her Majesty's mint, or in copper coin of the existing Portuguese Indian currency valued as prescribed in clause (b).

5. The Governor General of British India engages that the Government of British India shall,—

(a) on presentation by or on behalf of the Governor General of Portuguese India of any silver bullion or coin at the mint at Bombay,

or

or at such other mint as the said Government from time to time appoints, deliver to the said Governor General or his agent, after such interval as in the judgment of the Mint Master is necessary for the process of coinage, the produce of such silver bullion or coin, in the silver coin established by this Convention, subject, always, to the same duty, charges, fees and regulations as are for the time being in force for the conversion into British Indian currency of bullion and coin, presented at the said mint: provided that, save as provided in clause 4, the said Government shall not be bound thus to deliver more than four lákhs of rupees in any one year;

- (b) coin for the Governor General of Portuguese India the copper coins established by this Convention, to such amounts and in such denominations as the said Governor General may require, upon payment of the value inscribed upon such coins in the silver coin established by this Convention or in British Indian rupees: provided that, saving as engaged in clause 4, the said Government shall not be bound thus to coin more than twenty thousand rupees' worth of such coin in any one year.

In lieu of any seignorage or profits which the Portuguese Government might otherwise claim on account of the coinage on their behalf provided by this clause, the Governor General of British India engages to pay the Governor General of Portuguese India an indemnity of four thousand rupees per annum, commencing from the first day of November, one thousand eight hundred and eighty-three, and continuing as long as this Convention remains in force.

6. All silver and copper Portuguese coins, coined under the provisions of this Convention, shall, while this Convention remains in force, be legal tender

tender in payment or on account throughout British India to the same extent, and subject to the same exceptions in the case of coin which has been called in, or is under weight, or has been clipped, filed or defaced, as in the case of the corresponding silver and copper coins issued by the authority of the Government of British India for the time being in British India.

All silver and copper coin which has been issued by the authority of the Government of British India shall, to the said same extent and subject to the same exceptions, be a legal tender in payment or on account throughout Portuguese India.

7. The Governor General of Portuguese India agrees that, if at any time while this Convention continues in force the Government of British India should recall the whole body of British Indian coin corresponding to any description of Portuguese coin issued under this Convention, or change the monetary system of British India, he will, if requested by such Government so to do, recall all Portuguese coin of that description, or change in like manner, as the case may be, the monetary system of Portuguese India: provided that the expense incurred in recalling such coin or making such change shall be defrayed by the Government of British India.

8. When any silver coin, purporting to have been issued under the provisions of this Convention, is tendered to any officer of the Government of British India, authorized by that Government to act under this clause, and is deemed by such officer to be counterfeit, or to have been reduced in weight otherwise than by reasonable wearing, he may, by himself or another (subject to the rules which the said Government prescribes in this behalf), cut or break such coin and return the pieces to the person tendering the same, and the loss caused by such cutting and breaking shall be borne by such person.

9. When any such silver coin which has been called in is tendered to any officer of the Government
of

of British India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola; but the expense thus incurred shall, except when such coin has been recalled under clause 7, be borne by the Portuguese Government.

10. In like manner, when any British Indian coin which has been called in is tendered to any officer of the Government of Portuguese India authorized by that Government to act under this clause, he may cut or break such coin, and shall receive it at the rate of one rupee per tola; and the expense so incurred shall be borne by the Government of British India.

11. The Governor General of Portuguese India engages to appoint an officer who will receive, while this Convention continues in force, from any person tendering the coin next hereinafter mentioned, all silver coin issued under this Convention which may have lost, by reasonable wearing, more than two per cent., and shall pay for the same at the rate of one rupee per tola.

12. Nothing in this Convention shall be held to limit the powers of His Most Faithful Majesty the King of Portugal and the Algarves to establish at any time such system of paper currency as he may deem fit.

The Governor General of Portuguese India has the power for the present to issue the following paper money :—

Five-rupee notes, payable in copper.

Ten-rupee notes, payable in silver.

Twenty ditto.

Fifty ditto.

One hundred ditto.

Five hundred ditto.

The amount of paper money issued will never be above four per cent. of the value of the money in circulation, the Portuguese India Government notes being

being guaranteed by the Portuguese Government and payable to the bearer.

13. The Governor General of Portuguese India engages that, whenever the Government of British India exercises in respect of British India generally, or of all the territories adjacent to Portuguese India, the powers conferred on it under a certain Act of the Governor General of British India in Council, called "The Indian Weights and Measures of Capacity Act, 1871," then he, the said Governor General of Portuguese India, will enforce throughout Portuguese India provisions similar to those of that Act.

14. This Convention shall come into force on the first day of November, one thousand eight hundred and eighty, and shall remain in force until the expiration of a year counting from the day on which one or other of the Contracting Parties shall have given notice to the other of its intention to put an end to it: provided that no such notice shall be given until four years after the date on which the Convention comes into force.

15. The Governor General of Portuguese India undertakes that, in the event of this Convention being put an end to under clause 14 or otherwise, no coins resembling any of the coins struck under this Convention shall be struck in or imported into Portuguese India, or shall be struck under the authority of, or with the sanction of, His Most Faithful Majesty in any other place.

Done at Pangim on the twelfth day of April, one thousand eight hundred and eighty.

(Sd.) CAETANO AL^{DRE}. D'ALMEIDA ALBUQUERQUE,
Governor General of Portuguese India.

Done at Calcutta on the eighteenth day of March, one thousand eight hundred and eighty.

(Sd.) LYTTON,
*Viceroy and Governor General
of British India.*

THE NEGOTIABLE INSTRUMENTS ACT, 1881.

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SCHEDULE.

1881.]

ACT No. XXVI OF 1881.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 9th December,

An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

WHIEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Negotiable Instruments Act, 1881:" Short title.

It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section 21, or affects any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882. Local extent.
Saving of usages relating to hundis, &c.

Commencement.

2. On and from that day the enactments specified in the schedule hereto annexed shall be repealed to the extent mentioned in the third column thereof. Repeal of enactments.

3. In this Act—

"Banker" includes also persons or a corporation or company acting as bankers; and Interpretation-clause.
"Banker":

"Notary public" includes also any person appointed "Notary public."

pointed by the Governor General in Council to perform the functions of a notary public under this Act.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4. A “promissory note” is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms :—

- (a.) “I promise to pay B or order Rs. 500.”
- (b.) “I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received.”
- (c.) “Mr. B, I O U Rs. 1,000.”
- (d.) “I promise to pay B Rs. 500 and all other sums which shall be due to him.”
- (e.) “I promise to pay B Rs. 500, first deducting thereout any money which he may owe me.”
- (f.) “I promise to pay B Rs. 500 seven days after my marriage with C.”
- (g.) “I promise to pay B Rs. 500 on D’s death, provided D leaves me enough to pay that sum.”
- (h.) “I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next.”

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

5. A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not “conditional,” within the meaning of this section and section four,

by

by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and section four, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person," within the meaning of this section and section four, although he is mis-named or designated by description only.

6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. "Cheque."

7. The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee." "Drawer."
"Drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need." "Drawee in
case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor." "Acceptor."

When acceptance is refused and the bill is protested for non-acceptance, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour." "Acceptor
for honour."

"Payee." The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee."

"Holder." 8. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

"Holder in due course." 9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to, or to the order of, a payee,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

"Payment in due course." 10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Inland instrument. 11. A promissory note, bill of exchange or cheque drawn or made in British India, and made payable in, or drawn upon any person resident in, British India shall be deemed to be an inland instrument.

Foreign instrument. 12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

"Negotiable instrument." 13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof.

14. When

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated. Negotiation.

15. When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser." Indorsement.

16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full;" and the person so specified is called the "indorsee" of the instrument. Indorsement
"in blank"
and "in
full."
"Indorsee."

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly. Ambiguous
instruments.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid. Where
amount is
stated differ-
ently in
figures and
words.

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand. Instruments
payable on
demand.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such

amount :

amount : provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

"At sight."
"On presentment."
"After sight."

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

"Maturity."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of
grace.

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Calculating
maturity of
bill or note
payable so
many months
after date or
sight.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations.

(a.) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(b.) A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(c.) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

24. In

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

Calculating maturity of bill or note payable so many days after date or sight.

25. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

When day of maturity is a holiday.

Explanation.—The expression “public holiday” includes Sundays: New-Year’s day, Christmas day: if either of such days falls on a Sunday, the next following Monday: Good-Friday; and any other day declared by the Local Government, by notification in the official Gazette, to be a public holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Capacity to make, &c., promissory notes, &c.

A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

Minor.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

27. Every person capable of binding himself or of being bound, as mentioned in section twenty-six, may so bind himself or be bound by a duly authorized agent acting in his name.

Agency.

. A general authority to transact business and to receive

receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Liability of agent signing.

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of legal representative signing.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of drawer.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Liability of drawee of cheque.

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of maker of note and acceptor of bill.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

33. No

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Only drawee can be acceptor except in need or for honour.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Acceptance by several drawees not partners.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Liability of indorser.

Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Liability of prior parties to holder in due course.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Maker, drawer and acceptor principals.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Prior is principal in respect of each subsequent party.

Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

39. When

Suretyship.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

Discharge of indorser's liability.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

First indorsement, " B. "

Second indorsement, " Peter Williams. "

Third indorsement, " Wright & Co. "

Fourth indorsement, " John Rozario. "

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

Acceptor bound, although indorsement forged.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptance of bill drawn in fictitious name.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Negotiable instrument made, &c., without consideration.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder

for

for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial
absence or
failure of
money-con-
sideration.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertain-

Partial
failure of
consideration
not consist-
ing of
money.

able

able in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

CHAPTER IV.

OF NEGOTIATION.

Delivery.

46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Negotiation
by delivery.

47. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(a.) A, the holder of a negotiable instrument payable to bearer,

bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b.) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

48. Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Negotiation by indorsement.

49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Conversion of indorsement in blank into indorsement in full.

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Effect of indorsement.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

(a) "Pay the contents to C only."

(b) "Pay C for my use."

(c) "Pay C or order for the account of B."

(d) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(e) "Pay C."

(f) "Pay C value in account with the Oriental Bank."

(g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These

These indorsements do not exclude the right of further negotiation by C.

Who may negotiate.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section fifty, indorse and negotiate the same.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

Indorser who excludes his own liability or makes it conditional.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

(a). The indorser of a negotiable instrument signs his name, adding the words—
"Without recourse."

Upon this indorsement he incurs no liability.

(b). A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

Holder deriving title from holder in due course.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

54. Subject

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Instrument indorsed in blank.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Conversion of indorsement in blank into indorsement in full.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Indorsement for part of sum due.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

58. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument obtained by unlawful means or for unlawful consideration.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor :

Instrument acquired after dishonour or when overdue.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or

Accommodation note or bill.

accepted

accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

Instrument negotiable till payment or satisfaction.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

Presentment for acceptance.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

Presentment of promissory note for sight.

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable

reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Drawer's
time for
deliberation.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Presentment
for payment.

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Hours for
presentment.

66. A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment
for payment
of instru-
ment payable
after date or
sight.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment
for payment
of promissory
note payable
by instal-
ments.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Presentment
for payment
of instrument
payable at
specified place
and not
elsewhere

69. A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Instrument
payable at
specified
place

Presentment where no exclusive place specified.

70. A promissory note or bill of exchange, not made payable as mentioned in sections sixty-eight and sixty-nine, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment when maker, &c., has no known place of business or residence.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment of cheque to charge drawer.

72. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of cheque to charge any other person.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of instrument payable on demand.

74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment by or to agent, representative of deceased, or assignee of insolvent.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

When presentment unnecessary.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:—

(a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorized

to

to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found ;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment ;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of
banker for
negligently
dealing with
bill presented
for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. Subject to the provisions of section eighty-two, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

To whom
payment
should be
made.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from

Interest
when rate
specified.

the

the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest
when no rate
specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of
instrument
on payment,
or indemnity
in case of
loss.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

Discharge
from liability—

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

by cancella-
tion;

(a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

by release;

(b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

(c) to

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

by payment.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

Discharge by allowing drawee more than twenty-four hours to accept.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

When cheque not duly presented and drawer damaged thereby.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Cheque payable to order.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Parties not consenting discharged by qualified or limited acceptance.

Explanation.—An acceptance is qualified—

(a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated ;

(b) where it undertakes the payment of part only of the sum ordered to be paid ;

(c) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere ; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere ;

(d) where

(d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

Effect of material alteration.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties ;

Alteration by indorsee.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections twenty, forty-nine, eighty-six and one hundred and twenty-five.

Acceptor or indorser bound notwithstanding previous alteration.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of instrument on which alteration is not apparent.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon ; and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

Extinguishment of rights of action on bill in acceptor's hands.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Dishonour by
non-accept-
ance.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

Dishonour by
non-pay-
ment.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

By and to
whom notice
should be
given.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

94. Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and

Made in
which notice
may be
given.

it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Party receiving must transmit notice of dishonour.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

Agent for presentment.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

(a) when it is dispensed with by the party entitled thereto;

(b) in order to charge the drawer, when he has countermanded payment;

(c) when the party charged could not suffer damage for want of notice;

(d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(e) to charge the drawers, when the acceptor is also a drawer;

(f) in the case of a promissory note which is not negotiable;

(g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each. Noting.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest. Protest.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security. Protest for better security.

101. A protest under section one hundred must contain— Contents of protest.

(a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(b) the name of the person for whom and against whom the instrument has been protested;

(c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(d) when

(d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(e) the subscription of the notary public making the protest;

(f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

Notice of protest.

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Protest for non-payment after dishonour by non-acceptance.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

Protest of foreign bills.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

CHAPTER X.

OF REASONABLE TIME.

Reasonable time.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

106. If

^a **106.** If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

Reasonable time of giving notice of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

Reasonable time for transmitting such notice.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Acceptance for honour.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

How acceptance for honour must be made.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Acceptance not specifying for whose honour it is made.

111. An

Liability of
acceptor for
honour.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not ; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

When accept-
or for hon-
our may be
charged.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Payment for
honour.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Right of
payer for

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Drawee in
case of need.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Acceptance
and payment
without protest.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

CHAPTER XII.

OF COMPENSATION.

Rules as to
compensa-
tion.

117. The compensation payable in case of dishonour

honour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorser, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules :—

(a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;

(b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;

(c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment ;

(d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;

(e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

118. Until the contrary is proved, the following presumptions shall be made :—

Presump-
tions as to
negotiable
instruments
of consider-
ation ;

(a) that every negotiable instrument was made or
drawn

drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration ;

as to date ; (b) that every negotiable instrument bearing a date was made or drawn on such date ;

as to time of acceptance ; (c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity ;

as to time of transfer ; (d) that every transfer of a negotiable instrument was made before its maturity ;

as to order of indorsements ; (e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon ;

as to stamp ; (f) that a lost promissory note, bill of exchange or cheque was duly stamped ;

that holder is a holder in due course. (g) that the holder of a negotiable instrument is a holder in due course : provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

Presumption on proof of protest. **119.** In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Estoppel against denying original validity of instrument. **120.** No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Estoppel against denying capacity of payee to indorse. **121.** No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity

capacity, at the date of the note or bill, to indorse the same.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument. Estoppel against denying signature or capacity of prior party.

CHAPTER XIV.

OF CROSSED CHEQUES.

123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally. Cheque crossed generally.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker. Cheque crossed specially.

125. Where a cheque is uncrossed, the holder may cross it generally or specially. Crossing after issue.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker. Payment of cheque crossed generally.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection. Payment of cheque crossed specially.

127. Where

Payment of
cheque cross-
ed specially
more than
once.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment in
due course of
crossed
cheque.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment of
crossed che-
que out of
due course.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Cheque bear-
ing "not
negotiable."

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Non-liability
of banker re-
ceiving pay-
ment of
cheque.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

CHAPTER XV.

OF BILLS IN SETS.

Set of bills.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and

is

is extinguished when one of the parts, if a separate bill, would be extinguished.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Holder of first acquired part entitled to all.

CHAPTER XVI.

OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Law governing liability of maker, acceptor or indorser of foreign instrument.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Law of place of payment governs dishonour.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance

with

with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

Instrument made, &c., out of British India, but in accordance with its law.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Presumption as to foreign law.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

SCHEDULE.

(a)—STATUTES.

Year and chapter.	Title.	Extent of repeal.
9 Wm. III, c. 17	An Act for the better payment of Inland Bills of Exchange.	The whole.
3 & 4 Anne, c. 8	An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.	The whole.

(b)—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Title.	Extent of repeal.
VI of 1810. ...	An Act for the amendment of the law concerning the negotiation of Bills of Exchange.	The whole.

1881.]

Negotiable Instruments.

Number and year.	Title.	Extent of repeal.
V of 1866 ...	An Act to amend in certain respects the Commercial Law of British India.	Sections 11, 12 and 13.
XV of 1874 ...	The Laws Local Extent Act, 1874.	The first schedule, so far as relates to Act VI of 1840 and Act V of 1866, sections 11, 12 and 13.

